STATE OF INDIANA)
) SS:
COUNTY OF DELAWARE)

IN THE DELAWARE COUNTY SUPERIOR COURT

CRAIG DUNN and PHILIP WILEY, et al.,)
Plaintiffs,)
)
-v-) CAUSE NO.
) 18D01-9305-CT-06
RJR NABISCO HOLDINGS CORPORATIONS, et al.,)
Defendants.)

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MR. CASSELL: All rise.
(Jury not present)
THE COURT: Thank you, be seated.
Good morning, Counsel.
ALL: Good morning, Your Honor.
THE COURT: We're on the record.
Jury is not present.
Issue was raised by Mr. Ohlemeyer regarding opportunity to voir dire the witness regarding conversations, at least the first conversation that apparently took place at the law firm in Kansas City. Court did permit an opportunity to do that.
Also before the Court is a document marked 9107 entitled "Research Documents." We'll discuss that also.
Is Dr. Wigand here?
MR. MOTLEY: Yes, sir, I'll get him.
THE COURT: Thank you, Counselor.
Good morning, Doctor.
THE WITNESS: Good morning, sir.
THE COURT: Raise your right hand.
PLAINTIFFS' WITNESS, JEFFREY WIGAND, SWORN
THE COURT: Have a seat.

Mr. Ohlemeyer. Do you care to inquire?
MR. OHLEMEYER: Yes, I do. Thank you.

VOIR DIRE EXAMINATION
BY MR. OHLEMEYER:

Q Good morning, Mr. Wigand. Am I correct when you started working at Brown & Williamson, they had been and were involved in lawsuits where people claimed injury as a result of using their products?

A Perhaps there was --

THE COURT: Excuse me, Counsel.

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Would you state your name for the record? That was my fault.

THE WITNESS: Jeffrey Steven Wigand. W-I-G-A-N-D.

THE COURT: Thank you.

Q And when you started working at Brown & Williamson, you knew they had lawyers who held positions within the company; right?

A When I started with the company, I didn't know that at first when I joined the company.

Q Well, when you worked at other companies, did they have lawyers or general counsel at

those companies?

A They most certainly did.

Q And when you started working at Brown & Williamson, you learned that they had a legal staff in Louisville.

A I learned that, yes.

Q Did there come -- and you also learned that they had lawyers from outside the company that they employed from time to time to assist them in preparing for and defending these lawsuits; right?

A I think that's part of it, yes.

Q And one of those law firms was in Kansas City; right?

A That's correct.

Q And --

A Shook Hardy & Bacon.

Q And you traveled to Kansas City with the general counsel of Brown & Williamson to go to a meeting in Kansas City; right?

A That's not correct.

Q Who did you go with?

A I went with Kendrick Wells. He was not general counsel.

Q What was his title?

A He was assistant general counsel in product litigation.

Q He was the lawyer at Brown & Williamson who was in charge of product liability litigation?

A That's correct.

Q You and he went to Kansas City to the law firm that Brown & Williamson hired to represent them in some of those cases; right?

A That's perhaps true, yes.

Q And the issues, the scientific issues that were discussed at any or all of those meetings were issues that arise from time to time in these types of lawsuits; right?

A That could be true, yes.

Q And, in fact, Mr. Wigand, one of the things you did the first year you started working at Brown & Williamson was to implement a legal writing seminar in conjunction with the legal department and outside counsel to correct what you perceived to be past deficiencies noted in R & D writing

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practices; isn't that right?
A I did that at the direction of Mr. Sandefur

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and the legal department.
Q So the first year you were at Brown & Williamson you worked with the legal department and their outside counsel.
A At the direction of Mr. Sandefur, yes.
Q And then your plan for your second year at Brown & Williamson was to initiate a legal briefing session to prepare for either litigation or testimony that might be required in Congress on certain pending bills and regulatory matters?
A Yes, I believe that's correct.
MR. OHLEMEYER: Well, Your Honor, at this point I think it's pretty clear that this man and this company had meetings in and outside the company with lawyers in order to prepare for lawsuits, congressional testimony and, in fact, this witness, as early as his first year at the company, was involved with outside counsel and inside counsel in such matters.
MR. MOTLEY: May I question him?
THE COURT: Certainly.
VOIR DIRE EXAMINATION
BY MR. MOTLEY:

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Q Dr. Wigand, was the first -- I'm talking only about the first trip, okay? Let's divorce ourselves, if we can, from subsequent trips. The first trip you took, was that part of your business orientation?
A Yes, it was.
Q Did you go out there to discuss any particular case or litigation at all?
A None whatsoever.
Q Did you even know why you were -- what was going to happen when you went out there before you went?
A I had a scant idea of what was going to go on.
Q You didn't know exactly what they were going to tell you, did you?
A No, I didn't.
Q And as it turns out, they didn't discuss any particular case with you, did they?
A No case whatsoever.
Q What they discussed with you was, quote, the party line to take in public relations and every other aspect of your job; correct?
MR. OHLEMEYER: Objection, Your Honor, it's argumentative.

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THE COURT: Why don't you rephrase that, Counselor.
Q What's a party line?
A That there is no relationship between smoking and health.
Q And that's what they taught you when you were out there?
A That's part of what they taught me. They

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also showed me where all the deficiency of the existing studies were and how they would attack them in litigation.

Q Did they ever mention a specific case?

A No, they did not.

Q Did they talk about you making -- if you made public appearances you were supposed to stay with the party line.

A That I think was implied, but I didn't get that implicitly.

MR. MOTLEY: Your Honor, I think it's clear --

THE COURT: Just one second.

Any other questions for the witness?

MR. OHLEMEYER: No, I don't, Your Honor.

THE COURT: May the witness step

down then?

MR. OHLEMEYER: Yes, Your Honor.

MR. MOTLEY: Yes, Your Honor.

THE COURT: Thank you, Doctor, you can go back outside.

Let's confine our remarks at this point to the first conversation.

Mr. Ohlemeyer, what is your thought?

MR. OHLEMEYER: If we could have the court reporter read it back. He just said one of the things he went to Kansas City to the outside counsel with the inside counsel to discuss issues including issues that arise in litigation. It was his words. It came out of his mouth on Mr. Motley's question.

MR. MOTLEY: Your Honor, if -- I don't deny that part of the party line was for litigation. But this was not a meeting that was for the purpose of having to do with any ongoing litigation specifically or generically. He went there as part of his business orientation. He went there to be inculcated with the party line to be used in a variety of purposes, not just for

litigation. He went out there for no specific case. The cases do not --

Your Honor, with due respect, you're supposed to narrowly construe attorney-client privilege. These companies, from the documents that I provided Your Honor and from all these discussions, I hope that you've had an opportunity to read these, these companies are taskmasters at abusing attorney-client privilege, period. Just because they insinuate a lawyer into everything they do does not make it attorney-client privilege.

THE COURT: I reviewed the cases submitted and other cases, some of the treatise on this subject. I don't think the prospect of future litigation would put us in the area of attorney-client privilege.

I think my ruling last evening was

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correct and I'll confirm my ruling as to the first conversation. I find that was not protected by the attorney-client privilege.

Regarding 9107, any comment on that, Mr. Motley?

MR. MOTLEY: Well, Your Honor, I

think we ventilated that adequately yesterday. I just repeat, Your Honor, that if it is privileged, if it is privileged and, again, nothing about the fact that they stamped it attorney-client privilege doesn't mean anything. There was no litigation that was discussed at that meeting. It was merely a way, and if Your Honor believes it has something to do with litigation, it only has to do with litigation from the standpoint of trying to hide things from the United States to discovery. That's all it was about. So by definition, if it is privilege, it's crime/fraud.

THE COURT: We know it was prepared by a lawyer.

Mr. Ohlemeyer, is the representation that it is -- is that the argument, that it is attorney-client privilege?

MR. OHLEMEYER: That's the claim, Your Honor, yes.

THE COURT: Now, Mr. Motley, if we assume that it is attorney-client privilege, Mr. Motley thinks it should be admitted under the crime/fraud exception. Any

comment on that?

MR. OHLEMEYER: I think that requires, Your Honor, what is called a Zolan hearing which, as I recall, although I don't have that at my fingertips, allows the parties to present submissions to you in camera and to talk with you in camera about the document in order to make a determination as to crime/fraud.

Obviously, if Your Honor determines it's not privilege, that procedure doesn't have to -- doesn't have to obtain. And I realize that even over a claim of privilege Your Honor can decide it's not privileged. But I think the issue of crime/fraud is a lot more complicated than Mr. Motley seems to suggest it is.

MR. MOTLEY: Well, Judge, there is no question but that United States Supreme Court has held as a matter of due process that there should be a showing made. I think we've demonstrated in this record a showing.

Once we make the showing, then we make a prima fascia showing, which I think we've

demonstrated through this witness and other documents that Your Honor has admitted into evidence.

If Counsel wants to rebut this in some

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fashion, he should have done that yesterday. He has an opportunity to file in camera any rebuttal to my assertion that that constitutes a crime and a fraud.

But on the face of the document, Your Honor, which is available to Your Honor not just by me giving it to you, but it's on the Internet, Your Honor can consider all of the evidence that I've placed in this record so far on determining whether or not this particular document demonstrates a furtherance of a crime and a fraud.

I can hand Your Honor up evidence that this defendant, and particularly Mr. Kendrick Wells, started designing ways to avoid and, with due respect to Mr. Ohlemeyer, his former senior partner, Mr. Hardy, in 1970, started designing ways to avoid discovery in the United States courts by doing things just as is demonstrated by that document that you have

before you.

THE COURT: I've reviewed the document and the cases on point. I do not find it is covered by the attorney-client privilege or work product. 9107 will be admitted.

(Plaintiffs' Exhibit(s) 9107 received in evidence.)

MR. SHOCKLEY: Your Honor, as I recall, but I'm not certain, these are offered only against certain defendants?

MR. MOTLEY: Yes, that's offered only against Brown & Williamson.

THE COURT: That was my understanding, 9107 is Brown & Williamson.

MR. MOTLEY: At this point in time, Your Honor, if I can establish Mr. Cantor's connection with BAT-PLC, and I don't know if I can or if I can't. I don't know remember who he worked for. I may revisit that. My colleague tells me he didn't so, and I know he knows it better than I do so...

MR. OHLEMEYER: I have the ten documents they've told me they want to use today.

(Discussion off the record)

MR. OHLEMEYER: Your Honor, we can resolve these issues very quickly. I would like to kind of divide them in certain piles.

MR. MOTLEY: Would you give me the numbers, Bill?

MR. OHLEMEYER: 140, 270, 435, 8935, 8919, 9108, 9851, 9852, 9854, 9855, 10322, 21387, 30941, and 35794.

And I think it would be easier, Mr. Motley, if we kind of --

MR. MOTLEY: Do you want me to come up there?

MR. OHLEMEYER: Yes.

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(Bench discussion)
MR. OHLEMEYER: Here are the ones I have no objections. 9851, 9852, 9855, 10322. And then on 9854 we need to check on.
(Bench discussion)
THE COURT: We'll bring the jury back in five minutes.
MR. CASSELL: All rise.
(Jury present)

THE COURT: Be seated. Good morning, ladies and gentlemen.
ALL: Good morning.
THE COURT: Jury appears in its entirety, together with the alternates.
The Court on the break took some matters under advisement, Counsel, and I'll read through these.
The exhibits that were offered and will be admitted, Plaintiffs' 140, 9108, 8935, 10322, 9855, 9852, 9851, 8919.
(Plaintiffs' Exhibit(s) 140, 9108, 8935, 10322, 9855, 9852, 9851, 8919 received in evidence.)
The following will not be admitted: 7577, 270.
(Plaintiffs' Exhibit(s) 7577, 270 not received in evidence.)
The Court has taken the following under advisement pending foundation in terms of relevancy: 35794, 30941, 21387, 9854.
We will continue with the testimony of Dr. Wigand.
Good morning, sir. Be seated.
MR. SHOCKLEY: Your Honor, at an

appropriate time, we would ask a limiting instruction as to those exhibits.
THE COURT: That will be done, Counselor.
Be seated. Tell the jury your name.
THE WITNESS: Jeffrey Steven Wigand, W-I-G-A-N-D.
THE COURT: Mr. Motley.
MR. MOTLEY: Thank you. Good morning, ladies and gentlemen.

PLAINTIFFS' WITNESS, JEFFREY WIGAND, SWORN

DIRECT EXAMINATION (CONT.)

BY MR. MOTLEY:

Q Good morning, Doctor.
A Good morning, Mr. Motley.
Q Yesterday, Doctor, you were telling us as part of your orientation that you and Mr. Wells took a trip to Kansas City?
A That's correct.
Q And I wrote the name, you visited the law firm of Shook Hardy & Bacon; correct?
A That's correct.
Q Do you remember the names of any of the lawyers that you met with?
A I only can remember one first name right

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now, Bernie, but I'm sorry.
Q That's okay.
A Several of them.
Q In any event, you learned that Shook Hardy & Bacon represented Brown & Williamson in lawsuits; correct?
A At the time of the visit, yes.
Q And were you advised that there was a position, a position taken by the members of the cigarette industry with respect to cigarettes and health?
A Yes, I was.
Q And what was the position you were advised that the industry took?
A There is no data that demonstrates the relationship between smoking and health.
Q The case was not proven?
A The case was not proven.
Q There is doubt?
A There is doubt, there's controversy, hadn't been established yet.
Q Can you give us some time estimate? This is early in -- do you remember what the weather was like? Was it nice like it is outside today, or windy, cold, wet, snowy?

A It was very cold and it was in February of 1989.
Q February of 1989. How many days did you spend there; do you remember?
A I believe three days.
Q And were you given scientific literature?
A I was given reprints of scientific literature.
Q And did the lawyers tell you what the literature meant?
A They provided me the interpretations and how they would use that literature.
Q And did they tell you that they always claimed that lung cancer really wasn't lung cancer?

MR. WAGNER: Judge, we object to the continuous leading questions here by Counsel.

THE COURT: Last was leading. Sustained.

Q Did they tell you, sir, that they contested the very existence of lung cancer in individuals?

MR. WAGNER: Leading and suggestive, Your Honor, please. We can have

the witness testify instead of Mr. Motley.

THE COURT: Why don't you rephrase that, Counselor.

Q Dr. Wigand, did they give you information about, in an individual person's disease, as to whether or not they always contested whether the disease was what the victim claimed it was?

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MR. OHLEMEYER: Your Honor, I object to this. At this point we're talking about lawsuits.
MR. MOTLEY: Oh, no.
MR. OHLEMEYER: The question -- and that's not relevant, and that's not within the scope of your previous ruling.
MR. MOTLEY: I didn't ask --
THE COURT: Overruled.
Q Did they tell you that, sir?
A I'm sorry, Mr. Motley, you're going to have to --
MR. MOTLEY: I'm going to have to have the court reporter read it to you, sir. If I try to restate it, I'll get it wrong.
The last question, please, ma'am.
And please listen carefully.

(The requested material was read back by the reporter.)
MR. OHLEMEYER: Same objection, Your Honor.
THE COURT: Noted. You may answer that.
A I believe so.
Q Doctor, don't tell me anything about it, but do you have -- did you have additional trips to Kansas City after February 1989?
A Yes, I did.
Q And did the same law firm members visit you in Louisville -- and don't tell us anything -- if they did, just say yes. If they didn't, just say no.
A Yes.
Q All right. Now, let's turn to January the 17th, 1990, New York City. Doctor, if you would, with the Court's permission, would you come down and tell us the four or five whatever, however many topics were discussed, can you come down and write them on the board and explain them one after another on the meeting of January 17, 1990.
MR. OHLEMEYER: Same objection,

Your Honor, that relates to the agenda.
THE COURT: All right. I'll show that.
MR. WAGNER: And, Judge, I'm not sure but I want to be sure that I have a relevancy objection that this is January 17, 1990. It doesn't have any relationship to any of the issues in this case, far beyond any time period. For all those reasons, it's irrelevant to anything that this jury will ever have to decide.
THE COURT: I'll note your relevancy objection on a continuing basis.
Mr. Ohlemeyer's objection is overruled.
Doctor, you may step down.
Q Now, I want you to just write one by one, write the first broad subject matters that

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you talked about, and then I'll ask you about them. You write it in your own handwriting.

First of all, let's orient ourselves again.

MR. MOTLEY: Your Honor, for the record, I move to introduce formally 9107 which Your Honor ruled upon earlier.

THE COURT: The Court has admitted that, ladies and gentlemen, 9107, and this is admitted.

MR. MOTLEY: Against Brown & Williamson at this time.

THE COURT: This is admitted, ladies and gentlemen, as to Brown & Williamson only and no other defendants.

Q Let's reorient ourselves. This was a meeting held in New York City. You were there; correct?

A Yes.

Q And you gave us the list of, yesterday, some scientists who were there from various British American Tobacco Company affiliates.

A Yes, I did.

Q And were there lawyers there?

A Yes, there were.

Q Will you tell us what lawyers you remember being there.

A There was a general, I guess the general solicitor, I think it's called in the U.K., for the number one lawyer of BAT Industries, Stewart Chelton, C-H-E-L-T-O-N. There was another lawyer present there from I think

BATCO or BAT, I think, Nick Canard, and I think his initials are on the bottom of the last sheet. NBC.

Q That would be capital NBC like the network?

A Yes.

Q And his name was what? Nick?

A Canard.

Q Do you remember how to spell that?

A I think it's C-A-N-A-R-D.

Q All right. Go ahead. Anybody else?

A Kendrick Wells.

Q Mr. Wells was there.

A I'm trying to think of attorneys. German attorney's name, Dreiser or Dreisen.

Q All right. So you all gathered there in New York. Do you have any recollection where you met?

A I believe it was at the Hilton.

Q Okay. And now tell us, start with the first one that you remember was the topic of discussion.

A The reason why we got there was because of what happened in the British Columbia meeting minutes. And the meeting focused on how to control, how to understand what type

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of scientific documents were in each company, what type of scientific documents each company needed to have. So we dealt with the types of documents that each company could have.

So there's a whole issue of broad terms. One is, I guess, control of documents.

Q What kind of documents?

A Scientific documents.

Q Control of scientific documents. Okay. What was another subject?

A Second subject is -- and could I just --

Q This is your board. Your pen. Your day in court.

A Two elements to control. And I think you can look, if you follow along on that sheet, and one is access to a database. The second is access to a distribution of reports.

Q So you had a meeting to discuss who would get copies of reports?

A Yes.

Q Among other things?

A On a need-to-do basis.

Q On a what?

A On a need-to-have basis.

Q Okay. All right.

A There was the whole issue of -- I'm just going to say caution in writing.

Q Now, what do you mean by caution in writing, Dr. Wigand? You're a scientist. You're there with lawyers and you talk about caution in writing.

A This goes -- I have to give a little history, if that's possible.

Q You may be able to but you may not. But go ahead and start.

THE COURT: He asked you what you meant by the term "caution in writing."

A How not to write a document that in discovery would pose problems in the lawsuit. These sometimes were referred to as hot documents or smoking gun documents.

MR. OHLEMEYER: May I have a continuing objection to this, Your Honor, for the reason previously stated?

THE COURT: I'll show it.

MR. OHLEMEYER: Also it's calling for opinions from this witness.

THE COURT: Overruled. Go ahead.

Q Smoking gun document, as you understood it, you were there, you were vice president; what did you understand a smoking gun document to be? What was the concern?

MR. OHLEMEYER: Excuse me, there is no foundation that the phrase "smoking gun" was used. If he wants to ask him that question, he ought to ask it, but I don't

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think we're proceeding with the way we should proceed.
Q He just said smoking gun.
THE COURT: I thought he said that.
MR. OHLEMEYER: That was his characterization. I want to know whether he used that word or someone told him that.
THE COURT: Ask him that.
Q Where did you get the term "smoking gun" from?
A That's why I tried to give somewhat of an introduction, because that was a term that was used early on in the first sort of caution in writing seminar for the scientists conducted by the law firm of Shook Hardy & Bacon.
Q They used -- Shook Hardy & Bacon used the

term "smoking gun"?
MR. WAGNER: Leading and suggestive.
A No. Mr. Sandefur used the term "smoking gun," "hot documents."
Q Mr. Sandefur being the president.
A Yes.
Q So that's where you got the term from?
A And that's how the original caution in writing seminar. This is a second phase that came out of the meeting.
Q All right. And caution in writing, who told you that you had to be careful about what you said; do you remember specifically?
MR. OHLEMEYER: Objection, Your Honor, it's hearsay.
MR. MOTLEY: Let me lay a foundation.
Q You were there as vice president of Brown & Williamson; correct?
A Yes.
Q Who did most of the talking at that meeting?
A In the New York meeting?
Q Yes.
A The attorneys.

Q Including Mr. Wells?
A Yes, sir.
Q Okay. Of Brown & Williamson.
A Yes, sir.
Q And they did the instructing on how to be cautious in what you said in the papers?
A How to remove contentious words, words that in discovery would lead to uncomfortable situations.
Q What kind of words were you told not to put in a piece of paper?
A Words such as safer.
Q Safer. You were told --
A Less hazardous.
Q Okay. What else was discussed at the meeting?
A Also in the caution in writing there was a

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process by which communications between scientists had to be reviewed before scientists could communicate with each other by the functional head of the department. So scientists couldn't freely communicate. They had to get whatever communication that went overseas to other companies or other scientists first reviewed.

Q And who was involved in that review?
A Normally the department heads.
Q Okay. Anything else discussed?
A It's the lawyer vetting of communications or science and other communications reports.
Q What did you -- start over.
The lawyers who were teaching you all this, did they define or give you meaning to the word "vet"?
A Vet is to take out certain words or phrases or texts that may, on discovery, become embarrassing or create issues that were not apparent in the document that was -- like yesterday, the second document, the short document was very Vanilla. It took out the substance of the conversation.
Q Okay. Now, on the document -- 9107, ladies and gentlemen. Item 2C, I hand you, sir. Is that what you're talking about?
A Yes, sir.
Q 2C. Okay. What other general topics were discussed?
A The distribution of research reports.
Q Distribution? You mean who they went to?
A Who they went to.

Q Are you done?
A No. Then there's also one of elimination sequestering that I'd like --
Q Elimination sequestering. If you could keep it all on one sheet. Sequestering, what does that mean?
A Elimination sequestering of scientific documents.
Q What does that mean?
A That means that documents that didn't belong at Brown & Williamson would be held someplace else or they would be destroyed or they would never make it there.
Q Never make it where?
A To or beyond Brown & Williamson property.
Q So are you telling us that there were documents relating to smoking and health?
A Documents and/or data.
MR. OHLEMEYER: Excuse me, Your Honor, I object to the leading question.
THE COURT: It sounds like it's going to be leading. Why don't you rephrase it.
Q You keep talking about documents. This was a meeting of lawyers and scientists;

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correct?
A Yes.
Q This is a case about smoking and health. Okay? That's what we're interested in here.
MR. OHLEMEYER: I object to Mr. Motley's characterization of what this case is about. That's a matter of some dispute.
THE COURT: Sustained. Just ask your question, Counselor.
Q You understand, Doctor, I'm not asking for stuff about patents and things like that. Okay. Amongst the elimination and sequestration of documents, were there documents that dealt with smoking and health issues?
A Yes.
Q Yes?
A Yes.
Q And are you saying -- what do you mean that they were not kept at Brown & Williamson? What does that mean?
A Well, there's two ways it occurred. One is that on a -- I used to receive either by fax at my home or I would receive and look at,

read and have to return when I had meetings with Alan Heard, and I had set up with Alan Heard what was like a back channel.
Q A what?
A A back channel.
Q What does that mean?
A A way to get documents that was not the normal way. And he used to send me documents at my home, ask me for comment. I would send them back -- data, and I would send him back my comments about that and we had agreement that I would destroy those documents after I provided him my input.
Another occasion he came to the United States and he had data, the documents that he reviewed to me while he went to the University of Kentucky. I was allowed to read them, give him my comment, but I was not allowed to physically keep them.
When we went to a meeting in Thessalonika, Greece, it was a meeting of all the tobacco companies, and supplies, he showed me data on blood samples taken from people exposed to environmental tobacco smoke. I looked at the data, I wasn't able

to keep the data, I looked at it, gave it back to him.
Q Does that complete your recollection of the general topics?
A General, yes.
Q Will you return, please.
Doctor, in your prior service in the health care industry, had you ever

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encountered such an elaborate system as you have described here of document control, caution in writing, lawyers vetting and sequestration?

MR. OHLEMEYER: Objection, Your Honor, argumentative.

THE COURT: You may answer, Doctor. Overruled.

A No.

Q Now, sir, you mentioned that the chief man at the company, the CEO, was Mr. Pritchard; correct?

A That's correct.

Q And the headquarters was in Louisville, Kentucky; right?

A For Brown & Williamson, yes.

Q Are you familiar with a company called BAT

U.S., BATUS?

A Yes.

Q Tell the ladies and gentlemen of the jury what BATUS was, as you recall it.

A BATUS means British American Tobacco U.S. It was a holding company that was also in Louisville, Kentucky, about four blocks from Brown & Williamson's building.

Q It was four blocks away?

A Yes, sir.

Q Now, did you observe Mr. Pritchard, the chief man at Brown & Williamson, leaving Brown & Williamson's office and visiting BATUS?

A Many times.

Q And were you told by Mr. Pritchard, the chief executive officer, why he would physically get up and leave the headquarters of Brown & Williamson and go to BATUS?

MR. OHLEMEYER: Objection, Your Honor, hearsay.

THE COURT: Sustained.

MR. MOTLEY: It's not hearsay. It's a statement of the chief executive office. 801(D). It's an admission against

interest. It's by definition not hearsay. It's in the scope of his employment. His boss told him something. It is not hearsay I respectfully argue.

THE COURT: The objection is sustained at this time.

Q Would Mr. Pritchard go down to BATUS and come back and advise you of something he learned?

A Yes.

Q And he would physically get up and go to another office to learn something?

MR. OHLEMEYER: Objection, Your Honor. That's argumentative. How would this witness know the answer to that question?

THE COURT: Overruled.

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A Yes.
Q And, sir, with respect to smoking and health issues, would Mr. Pritchard physically get up, leave his office, go to BATUS and come back and tell you he had learned something that deals with scientific research?
MR. OHLEMEYER: Objection, Your Honor. Hearsay. It's the third time he's

asked the question.
MR. WAGNER: Besides that there is no foundation laid that he was there.
THE COURT: Sustained.
Q Okay. Were you there -- were you vice president when Mr. Pritchard would get up, leave his office and go to BATUS and come back?
A Yes.
Q And he would advise you of what?
MR. OHLEMEYER: Same objection, Your Honor.
MR. WAGNER: Same objection.
MR. MOTLEY: It's absolutely not hearsay.
THE COURT: Overruled now. You may answer.
A Yes.
Q Yes what?
A He would advise me that he had learned something or done something.
Q About smoking and health?
MR. WAGNER: Objection, Your Honor, it's leading and suggestive and I object to Mr. Motley continuing to testify.

THE COURT: Sustained as to the last.
The question was, Doctor, did he advise you anything about smoking and health.
A Can I explain what happened?
Q You've got to answer that question first. Yes or no. When he came back --
A Among other things, yes.
Q I didn't mean that that was the only thing he came back and told you.
A Among other things, yes.
Q Now, did you learn that there was communications going on between England and BATUS that Mr. Pritchard would report to you he had to go down to the BATUS office to find out?
MR. WAGNER: Judge, this is all leading and suggestive. I think the proper way --
THE COURT: That is leading. Sustained.
Q Dr. Wigand, what we're trying to get at here --
MR. OHLEMEYER: Excuse me, Your Honor, I don't think Mr. Motley ought to be

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telling anybody what we're trying to get at.
THE COURT: Sustained.
MR. MOTLEY: I'm getting some help from the back. I don't consider that necessarily help.

Q Dr. Wigand, did you learn from the very lips of Mr. Pritchard -- and I'm only interested in smoking and health issues right now, okay? -- why he would leave his office and go to BATUS and get information and come back and tell you about it?
MR. OHLEMEYER: Asked and answered, Your Honor.
THE COURT: Overruled. You may answer.

A Mr. Pritchard used to attend meetings in Europe with other members of the, what's called the TSRT, which was the Tobacco Strategy Review Team.

Q TSRT?

A TSRT. This is meetings between the number ones of all the affiliate companies and the chairman of BAT Industries. Minutes were generated from those meetings. Those minutes were sent to BATUS, the holding

company, so they would not be discoverable on B&W property.
MR. OHLEMEYER: Objection, Your Honor. Motion to strike, lack of foundation.
MR. MOTLEY: Absolutely --
THE COURT: Overruled. Motion to strike is denied. Go ahead.

A So I from time to time had assignments from these TSRT minute meetings in which Mr. Pritchard would have to retrieve the minutes or read them and give me assignments. I would give -- do the assignment that was required by the TSRT group and provide it back to Mr. Pritchard.

Q And this TSRT group was run out of what? It was a group of what?

A It was a group of the number one CEOs of each of the tobacco-affiliated companies meeting with the chairman of BAT Industries.

Q Dr. Wigand, could you tell us, sir, about the relationship, if any, between -- that you personally observed between BATCO and B&W.
MR. OHLEMEYER: Excuse me, Your

Honor. I'm vague as to what type of relationship we're talking about.
THE COURT: Fairly vague.

Q Corporate relationship. I mean, did BATCO and B&W communicate and, if so, about what?
MR. OHLEMEYER: Over what period of time, Your Honor?
MR. MOTLEY: He was there from '89

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to '93, Your Honor.
THE COURT: During that period of time you can answer that.
A Yes, they did communicate.
Q Did they communicate about smoking and health issues?
A Yes, among other things.
Q And did you personally engage in communications between BATCO and B&W about smoking and health issues?
A Yes, I did.
Q And who would you normally communicate with?
A Alan Heard, Ray Thornton, Richard Binns -- I mean Richard Baker, Chris Proctor, Ian Massey. Lots and lots of people.
Q During your orientation, did you visit with any BATCO officials?

A Yes.
Q Where did you go?
A In March of 1989 I went on a tour to BAT affiliate companies. One was the German company. I met with Dr. Kausch and his people, got an orientation to what they were doing in Germany.
Then I went to Millbank, or London, and met with Mr. Heard.
Then I went from London to Southampton and reviewed research projects that were ongoing at the central research facility, the fundamental research center.
Q Okay.
MR. OHLEMEYER: Your Honor, do you have my copies of those exhibits?
THE COURT: The bailiff does and he may have marked them.
MR. MOTLEY: Your Honor, you've admitted these documents?
THE COURT: Yes. 9852, 9851.
Ladies and gentlemen, this next series of documents that you will receive after you pass those down, please, 9851, 9852, and 10322, these are admitted only as to

Defendant Brown & Williamson Tobacco Corporation and no other defendant in this case.
Q Now, you just told us about the ST -- was it RT?
A TSRT, Tobacco Strategy Review Team.
Q Okay. Doctor, Exhibit 10322 has that name on it.
A Yes, it does.
THE COURT: Give us a second while we get all these out to the jury, Counsel.
MR. MOTLEY: Yes, Your Honor.
THE COURT: Mr. Ohlemeyer, did you get copies of these?
MR. OHLEMEYER: Not yet.
MR. MOTLEY: We're trying to get him copies.

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THE COURT: We have some extras up here.

All right, Mr. Motley.

Q Dr. Wigand, let's look at 10322 first, okay?

A Okay.

Q This is a Tobacco Strategy Review Team meeting; correct?

A Yes, sir.

Q And would that be something which you attended or received copies of the minutes of?

A I would never -- I never attended, nor would I get full copies of the minutes of the meeting ever.

Q Were they explained to you?

A Some of it, yes. I was not allowed to retain a copy. Normally these were stamped "secret."

Q And can you see up at the top right-hand corner, do you see a stamp up there or can you tell us what that says? Can you figure that out?

A I think it says "secret" but --

Q It's not clear?

A It's not really clear. But when I've seen these documents, they've always been stamped "secret."

Q Okay. Now, Doctor, I'm asking you based on your own knowledge now, not this document. I just want to ask you, are you familiar with the term that's used here? Would you look at the third paragraph, the third sentence right in the middle starting with

"The need to have." Okay? Do you see that?

A Yes.

Q "The need to have products which are superior to competition, particularly Philip Morris, is a clear Group --" and Group is capitalized -- "priority."

A Yes.

Q I'm asking you, sir, what was, to your knowledge, what was the Group? Who is the Group?

A Brown & Williamson, BAT Germany, Souza Cruz, Brazil, Imperial Canada, BATCO.

Q And who led the Group? Who was the leader of the Group?

MR. OHLEMEYER: Excuse me, Your Honor, lack of foundation. This witness said he never went to one of these meetings.

MR. MOTLEY: He also said the results were explained to him by Mr. Pritchard.

THE COURT: You can answer that. To your knowledge.

Q Who led the Group?

A Sir Patrick Shehee.

Q And who was he?

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A He was the chairman of BAT Industries, the parent company.
Q You know Bates numbers are down on the bottom right?
A Yes.
Q Look at the Bates numbers. The last three numbers are 802, please.
A I have that page.
Q You have that page?
A Yes.
Q And, sir, do you see environmental issues?
A Yes, I do.
Q And do you see No. 2, total sidestream reduction?
A Yes, I do.
Q To your personal knowledge, sir, did Brown & Williamson management express concerns about the health hazards of environmental tobacco smoke to nonsmokers?
A Yes.
Q Let's turn, sir, please, to 9851. Do you have that?
A Yes, I do.
Q Would you please look at page 2. Look at Item No. 15.

A Yes, sir.
Q "BATCO should play a leading role in progressing the following issues under the aegis --" that means what, aegis?
A Under the guidance, under the direction.
Q -- "of the Tobacco Strategy Review Team" that we have discussed; correct?
A Yes.
Q Look at No. C. R & D. Do you see that, sir?
A Yes, sir.
Q "Formulating and agreeing with the other tobacco operations a group-wide R & D program."
A Yes, sir.
Q What does that mean?
A That means that all the heads of research at all the affiliated companies would work together to come up with a research and development plan. And they would talk and communicate amongst each other.
Q Look at 9852, sir. Do you have that?
A Yes, I do, sir.
Q You were with the company then, July 1989?
A Yes, I was.

Q Look at Item No. 4. "In addition to its direct role in the management and development of its own businesses, BATCO will also be responsible through the Tobacco Strategy Review Team." That's what we've been -- TSRT; correct?
A That's correct.
Q "For formulating and agreeing with the other

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tobacco companies." Would that include Brown & Williamson?
A Yes, it would.
Q "A Group --" capitalized G, wide Group, that's the same group you defined for us earlier?
A Yes.
Q -- "R & D program for the preparation of compendiums on smoking issues and for initiating and coordinating other activities to promote the Group views on these issues." Is that the same group you discussed earlier?
A Yes, sir.
Q Under the control of Mr. Shehee?
A Yes.
THE COURT: Speak up, sir.

THE WITNESS: I'm sorry. Yes.
Q All right.
THE COURT: Are we done with these documents, Counselor?
MR. MOTLEY: Yes, Your Honor.
Q Now, Doctor, this document is dated March of 1983. You weren't with the company then; correct?
A That is correct.
Q But I want you to read to yourself, not out loud, the paragraphs 1 and 2. And then I have a question.
All right. Now, if you turn to the last page and read to yourself paragraph 29.
Now, sir, this predates your employment by six years; correct?
A Yes, it does.
Q When you joined the company, were the matters related in paragraphs 1 and 2 still the policy and procedure as you observed it with respect to the relationship between Brown & Williamson, BATCO, and BAT Industries?
MR. WAGNER: Judge, all of this is leading and suggestive. Please.

THE COURT: Overruled.
A Yes.
Q And is that document consistent with that relationship as you observed it when you joined the company in January 1989?
A I can't say it was when I joined the company.
Q While you were with the company?
A While I was with the company, yes.
MR. MOTLEY: Your Honor, we move the admission of 21387 at this time.
THE COURT: Objection has already been stated. Any other objections?
MR. SHOCKLEY: Who is it offered against?
MR. MOTLEY: It's offered against BAT Industries and Brown & Williamson.

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MR. OHLEMEYER: Your Honor, I point out, Your Honor, that paragraph 29 specifically contradicts the argument Mr. Motley is trying to make about it.

MR. MOTLEY: Well, it may. You ought to be glad.

THE COURT: Approach, Counsel.

(Bench discussion.)

MR. MOTLEY: We move it against Brown & Williamson only. That is 21387.

THE COURT: Over objection, 21387 will be admitted only as to Brown & Williamson.

(Plaintiffs' Exhibit(s) 21387 received in evidence.)

Q You have that, do you? You have 21387?

Dr. Wigand, would you please look at paragraph 2.

A Read paragraph 2?

Q No. Would you look at it.

A Oh.

Q Have you read it?

A Yes.

Q In part they're talking about sidestream smoke, or my abbreviation is SSS; correct?

A It talks about the visibilities, the particular part of sidestream smoke, yes.

Q There's a word in there or term in there, "biological activity." Do you see that?

A Yes, I do.

Q When you joined Brown & Williamson in 1989, did that term, "biological activity," have a certain meaning to you in your exercise of

your duties?

A Yes.

Q What does biological activity mean in the context of smoking and health issues?

A Various chemical components affect biological systems.

Q Humans?

A Humans, but also animal cells, also small singular-cell organisms. And components of smoke could be measured how they affect these biological systems. And biological activity -- no biological activity would mean that the chemicals that are in the smoke would not disrupt the normal functioning of the cell or cells.

Abnormal or high biological activity or positive biological activity would mean that the chemicals or compounds in question are affecting the normal processes of animal, plant, or microorganism cells.

Q All right. To your personal knowledge, when you were with the company, was Brown & Williamson concerned about the biological activity of sidestream smoke? And when I say concerned, I mean concerned about its

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effect on human beings.
A Yes.
Q All right. And did that concern about sidestream smoke confine itself to the person smoking the cigarette or did it include others, and if so, whom?
A Sidestream smoke is something more directed to the people that are passively smoking, those that are not smoking.
Q People in the vicinity of the smoker?
A People in the vicinity of the smoker, in a bar, in a building, in a home.
Q And in this 1983 document, sir, do you see the term in that same paragraph No. 2, "social acceptability issues"?
A Yes, I do.
Q When you joined the company in 1989, did you come to understand what that phrase meant to the officials of Brown & Williamson, that is, "social acceptability issues"?
MR. OHLEMEYER: Objection, Your Honor, lack of foundation.
MR. MOTLEY: I asked him when he was with the company.
THE COURT: Overruled. You may

answer.
A There are two aspects to a social acceptability. One aspect is just the odor associated with smoking and sidestream smoke of a total or ETS. The second part is that people became more aware that passive smoking had a negative effect on your health, and there was a growing body of evidence that showed that exposure to environmental tobacco smoke caused diseases in children. Caused --
MR. WAGNER: Objection, Your Honor, to this testimony from this witness about all these subjects, Your Honor. He's not an expert on all these matters.
MR. MOTLEY: He was hired to be an expert by the company when he was vice president, Your Honor.
THE COURT: Overruled. Go ahead, Doctor.
Q Go ahead, Doctor.
A I think I finished my thought.
Q That's fine.
MR. MOTLEY: Your Honor, you previously ruled on Exhibit 140. I now move

to introduce it against Brown & Williamson only. And here is a copy.
THE COURT: 140, ladies and gentlemen, has been admitted only as to Brown & Williamson Tobacco Corporation.
Are we done with the other document?
MR. MOTLEY: Yes, Your Honor, I am.
Q Dr. Wigand, now, this document, obviously,

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is prior to your coming there, but I want to ask you some questions about it. The Judge has admitted it in evidence against Brown & Williamson.

First of all, you've already told us who Mr. Kendrick Wells is. Is that the name of the author of this?

A Yes.

Q And did you know Mr. Ernest Pepples or did you know who he was? Did you come to learn who he was?

A I knew who he was, yes.

Q And who was he?

A He was -- well, he was a lawyer for the company.

Q For Brown & Williamson?

A For Brown & Williamson.

Q Was he general counsel?

A Yes.

Q And you see the name says "Smoking and Health - Tim Finnegan"?

A Yes.

Q Do you know who Tim Finnegan is?

A He was a lawyer for a New York firm and I can't give the complete name of all the partners in the firm, but Tim Finnegan I got to meet. He is a lawyer.

Q He was a lawyer representing, in some affairs, Brown & Williamson?

A Particularly related, I think, to smokeless tobacco products, but I think that's my recollection.

Q Would you look on page 2, please, sir. Do you see the paragraph entitled "Interesting Developments on the Hirayama matter"?

A Yes, I do.

Q First question, sir: What is the German Verbandt?

A Verbandt?

Q Verbandt.

A That is the German organization that deals with the cigarette companies.

Q And do you recognize the name of Professor Adlkofer?

A I recognize the name, but I don't know the man.

Q You never met him?

A No.

Q Do you recognize the name Hirayama?

A Yes, I do.

Q And what do you recognize about the name Hirayama?

A A, he was Japanese. Two, is, I believe, he conducted a study in Japan.

Q Just don't tell us the results. Just generally what was it about?

MR. OHLEMEYER: Excuse me, Your Honor, at this point the witness is testifying about matters that he has no

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personal knowledge of. We're reading from a document that was written eight years before he started at the company. And while I think it's appropriate for Mr. Motley to ask him to explain what certain things are, I don't think it's appropriate to ask him for opinions about things contained in the document that are beyond his personal

knowledge.

MR. MOTLEY: I haven't asked him any opinions. I asked him generally.

THE COURT: Why don't you set a foundation on the study, Counselor. Go ahead.

Q When you were vice president of Brown & Williamson, did you become familiar with the literature that deals with secondhand smoke and lung cancer? Yes or no?

A Yes.

Q And in the course and scope of your employment as vice president of research and development at Brown & Williamson, did you learn of the studies of Dr. Hirayama?

A Yes.

Q All right. Do you see in the middle they say they believe Hirayama is a good scientist and that his nonsmoking wives publication was correct? Do you see that?

MR. OHLEMEYER: Excuse me, Your Honor, the document says what it says. This can't be a predicate for this witness --

THE COURT: Overruled. He can do that.

Q Adlkofer invited Tsokos and Kastenbaum -- do you know, recognize either of those names?

A No, I don't.

Q -- to Germany to view the new data, although they would not be allowed to work with it or make copies.

Sir, do you know what new data Brown & Williamson is talking about there and what that relates to?

MR. OHLEMEYER: Excuse me, Your Honor, there is no foundation for that. That is Mr. Motley's argument. The witness isn't here to read exhibits to the jury. Let's ask him questions and get answers about what he does know.

MR. MOTLEY: I thought I asked him, Judge, if he knew what the term "new data" was.

THE COURT: That was the question. You can answer that.

MR. OHLEMEYER: There is no foundation for him to do anything but speculate about what that word might mean 17 years before he got there.

THE COURT: There is a foundation.

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Mr. Wagner?
MR. WAGNER: Judge, new data doesn't demand any interpretation. The jury is as capable of understanding new data as this witness is. It's not a scientific term. It's not some esoteric term that has to be explained and Mr. Motley is just simply going through a hearsay document that was admitted and that was developed long before this witness was there and he is being asked to interpret common everyday words, Your Honor. I object.
THE COURT: Overruled.
Go ahead, Mr. Motley.

Q Do you know what new data that they were allowed to read but not to copy was?

MR. WAGNER: No foundation, Your Honor.
MR. MOTLEY: That's what the document says.
THE COURT: He can answer that yes or no.

A I'm not specifically aware what this new data was. But it suggests it was --

MR. WAGNER: Your Honor.

THE COURT: You are not allowed to tell us what you think.

Q Don't speculate, okay?
Well, sir, do you see the second sentence, Adlkofer called Frank Colby at Reynolds and said that Germany has received new data from Japan which confirms the Hirayama work. Okay. Do you see that?
When you got there in 1989, did Mr. Wells share with you any new data from Japan which confirmed the Hirayama environmental tobacco smoke lung cancer data?

MR. OHLEMEYER: Objection, Your Honor, it's argumentative, it assumes facts that haven't been proven. This witness has no foundation to testify that anything in this document ever happened or existed.
MR. MOTLEY: Your Honor, I asked him if anybody shared that with him.
THE COURT: That was a fair question.
You may answer the last question.

Q I'm asking you when you got there and you were vice president of Brown & Williamson

whether Mr. Wells, who wrote this document, shared with you this new, alleged new data from Japan which confirms Hirayama's secondhand smoke lung cancer study?

MR. OHLEMEYER: Objection, Your Honor, it's an argument, not a question.
MR. WAGNER: Right.
Characterization of the document for the

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witness, Your Honor, in addition to all the previous objections. Leading and suggestive.

THE COURT: Overruled. You may answer.

A No.

Q Doctor, did there -- when you were with Brown & Williamson, did you have discussions with the president of the company, Mr. Sandefur, about nicotine?

A Yes, I did.

Q Did Mr. Sandefur, as president of the company, express to you any views, his views or the company's view as to whether nicotine was an addictive substance?

MR. OHLEMEYER: Objection, Your Honor. Relevance. Hearsay.

MR. WAGNER: And no time frame here, Your Honor.

MR. MOTLEY: I said when he joined. Let me correct that.

THE COURT: I think you said when he was there.

MR. MOTLEY: Yes, I did.

MR. OHLEMEYER: Relevance, Your Honor.

THE COURT: Relevance. Objection overruled.

Q Did you and Mr. Sandefur have discussions about Mr. Sandefur, the president of the company's, views as to whether or not nicotine was addictive or not?

A Yes.

Q And did Mr. Sandefur express to you, sir, his view as to whether nicotine was addictive?

A Yes.

MR. OHLEMEYER: Objection, Your Honor.

Q What was his view?

MR. OHLEMEYER: Relevance, hearsay.

MR. WAGNER: And there is no

foundation here, Your Honor, that the speaker of the hearsay that this witness is now about to describe had any particular concept about the subject that he's being asked about, which can have a variety of different meanings as the jury has already heard.

I mean, addiction can mean many things to many people. Habituation, all sorts of thing, dependence. We've got no basis here at all for this witness to testify on hearsay matters that aren't going to have any probative valve.

THE COURT: Mr. Motley, do you care to speak to that?

MR. MOTLEY: Should I limit myself, Your Honor, or should I respond fully?

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Let me do some foundation with that, okay, if I might.

THE COURT: Okay. The question is withdrawn.

Q Dr. Wigand, are you familiar with the term "hooked"?

A Yes.

Q Did Mr. Tommy Sandefur, the president of

Brown & Williamson, ever describe to you the effects of nicotine on smokers as being one of hooking them?

MR. WAGNER: Judge, please. These questions are all leading and suggestive. I mean, there has to come a point here where we hear testimony from the witness instead of Mr. Motley. There is the continual leading of the witness, Your Honor. It doesn't do me any good to object --

THE COURT: The last was leading.

MR. WAGNER: -- to leading questions when he's already told the witness what to say.

THE COURT: The last was leading. Restate your question.

Q Have you had discussions with Mr. Sandefur in which the term "hooked" was used?

A Yes. Can I explain?

Q Let me do this first.

THE COURT: Just answer the questions.

Q The Judge has --

MR. MOTLEY: Your Honor, if you let me introduce 9108, and I'll move its

introduction at this time.

THE COURT: 9108 was admitted. This is offered as to whom, Counsel?

MR. MOTLEY: Brown & Williamson only, Your Honor.

THE COURT: This is offered, ladies and gentlemen, only as to Defendant Brown & Williamson and no other defendant.

Q Doctor, did you have discussions with Mr. Tommy Sandefur, the president of Brown & Williamson, regarding snuff products?

A Moist snuff versus dry snuff, yes.

Q Will you explain what moist snuff is as you came to understand it.

MR. WAGNER: Objection, Your Honor.

MR. OHLEMEYER: What's relevance of any of this?

MR. MOTLEY: This document has been admitted over their objection and that's what this document is about and I'm about to prove foundation about nicotine through this document. You admitted this over the objection.

MR. OHLEMEYER: The admission of the document doesn't open up irrelevant

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issues for this witness to talk about. I think the issue is irrelevant.

THE COURT: Overruled.

Q Do you have the question in mind?

A Yes. My conversation with Mr. Sandefur --

Q Regarding moist snuff?

A And what is moist snuff.

Q I want to know what moist snuff is first.

A Moist snuff is a tobacco product that's finely ground up and rather richly flavored. It usually comes in a round puck. The user of moist snuff usually takes a pinch out and places it between their gum and their cheek and nicotine in the tobacco is absorbed through the mouth tissue.

It's a product that's very easily tolerated by first-time users because it's hard to start out smoking because smoking is an irritating process that causes some nausea, headaches. So moist snuff is an ideal way to be introduced into tobacco use.

And when I arrived on the scene at Brown & Williamson in 1989, there had been several attempts to make a moist snuff product and they all had failed for one

reason or the other.

Mr. Sandefur was keenly interested in this product because it was a way to get, hopefully, get new smokers. That is, it's an entry-level product. It gets you used to nicotine.

And so from time to time he used to call me during the week and ask me what the status was, what are the nitrosamine levels.

Q What are the what?

A The nitrosamine levels.

Q Nitrosamine being what?

A A cancer-causing agent, chemical.

And one of the objectives of the project was to get the nitrosamines out of the product by using some biological techniques I had learned in the health care industry.

And so he was keenly interested in getting this because it meant new smokers and new customers.

Q Would you turn to the last page of that document.

A I wasn't quite finished.

Q I'm sorry. I thought you were done.

THE COURT: Were you done with your response yet?

THE WITNESS: No, I'm not.

THE COURT: Go ahead.

A And so he had a keen interest, and so daily, sometimes, he would call me and ask me where are we going, who's doing what and so forth.

And then also on every Friday we had

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what was called an operating review meeting where all the vice presidents got together and kind of discussed what was going on in their various departments.

And from time to time he called me in to his office after the operating committee meeting and asked me to give him a further update on moist snuff. And one day I asked him early on why he was so keen about this moist snuff product, and he said he wanted to hook them young.

MR. OHLEMEYER: Excuse me, Your Honor, I object to this as calling for hearsay.

MR. MOTLEY: It's not hearsay from the president of the company.

MR. OHLEMEYER: It's got nothing to

do with any issue in this case.

THE COURT: Noted and overruled. Go ahead.

A That he wanted to get them hooked young and get them for life.

And when I asked him what he meant by hooked, did he mean addicted, he said addicted. He said addicted. And we're in the nicotine delivery business. The word "hooked" was a word that was used commonly within B&W and I came to associate the word "hooked" when it was used with addicted.

And, in fact, in the public record when I heard that Mr. Sandefur --

Q No, no. Don't go into any of that.

THE COURT: I think you've answered the question.

Q You've answered the question.

Look at the last page of the document, sir.

A Yes, sir.

Q Is this a note to you?

A Yes, it is.

Q "Tommy asked me to collect this memo when read so I would appreciate it if you

returned it to me at your convenience. It should not be distributed. Earl has seen it and it's signed."

Do you recognize that signature. Whose signature is that?

A Kendrick Wells.

Q And is this letting you see a document and taking it back up consistent with the agenda document of January 17, 1990, about limited distribution and sequestration of documents?

A Yes, this is one example of it.

MR. MOTLEY: Your Honor, may we approach for one moment?

THE COURT: All right.

(Bench discussion)

THE COURT: Ladies and gentlemen, we need to take about a ten-minute break at

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this point. When you are done with that exhibit, pass it down. And when everyone is done we'll take the break. I'm not hurrying you.

You can step down, Doctor.

MR. MOTLEY: You can take a break and go back to the room. Just leave those there, please.

THE COURT: We will take a ten-minute break and you may go with the bailiff.

MR. CASSELL: All rise.

(A brief recess was taken.)

MR. CASSELL: All rise.

THE COURT: Be seated. Jury back in its entirety.

Is the witness here?

MR. MOTLEY: Dr. Wigand, please.

THE COURT: All right, Doctor. Just have a seat, please. Again state your name for the jury.

THE WITNESS: Jeffrey Steven Wigand, W-I-G-A-N-D.

THE COURT: Mr. Motley.

BY MR. MOTLEY:

Q Dr. Wigand, I'm going to show you a document that's already in evidence that predates your arrival at the company by 25 years. The date of this is July 1963. I'd ask you, sir, please, to turn to page 4.

A Battelle says?

Q Yes, sir. But I want you to go down to the bottom part of the page, the sentence

beginning "moreover." I want to read this to you and then ask you a question.

"Moreover, nicotine is addictive. We are then in the business of selling nicotine, an addictive drug, effective in the release of stress mechanisms."

All right. Now, when you joined the company 25 years later, sir, was it known to you as vice president of research and development that Brown & Williamson was in the business of selling nicotine, an addictive drug?

MR. WAGNER: Leading and suggestive.

MR. OHLEMEYER: It's argumentative.

THE COURT: Overruled. You may answer that.

A Yes, I did.

Q Sir, earlier you mentioned ammonia. Do you recall that?

A Yes, I do.

MR. MOTLEY: I'm done with that document, Your Honor.

THE COURT: All right. You may pass it down.

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MR. MOTLEY: Judge, it's offered against Brown & Williamson only. Can I swap copies?

THE COURT: Yes, sir.

Just a minute on that document. Has this been offered yet?

MR. MOTLEY: You let it in. This is 8919.

THE COURT: You are correct. My mistake. We can pass that out. 8919 has been admitted.

Ladies and gentlemen, this is admitted only as to Defendant Brown & Williamson Tobacco.

All right.

Q Dr. Wigand, would you describe generally -- this manual was prepared when you were vice president of R & D?

A Yes, it was.

Q And if you look at the first page, do you recognize the names of the people that this was prepared by?

A These are people who are part of the B&W R & D organization.

Q They were working under you, some of them?

A Yes.

Q Mr. Black, do you know Mr. Black, Roger Black?

A Roger Black was manager of leaf blending.

Q Mr. Pritchard was, again, for the record, the chairman of the board?

A Yes, he was.

Q All right. And you recognize his signature?

A I don't believe that's his signature.

Q Okay. Who was BATCF?

A BATCF was British American Tobacco Cigaretten Fabriken, the German company.

Q I won't even ask you how to spell that.

What is this manual, sir?

A This was a manual that was prepared to optimize the use of ammonia technology throughout the BAT-affiliated companies.

Q Would you look at page 1, please. It's behind the forward. The forward is not numbered. It's really like the third or fourth page. It's titled "Introduction."

A Yes.

Q You testified about ammonia earlier; remember that?

A Yes, I have.

Q On the bottom of page 1 it says, "Cigarette smoke ammonia is entirely different. It effectively scavenges those smoke compounds that lead to harshness. It can liberate free nicotine from the blend, which is associated with increases in impact and 'satisfaction' reported by smokers."

Now, sir, would you explain, sir, what

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that sentence means that I just read?
A Nicotine, as it exists in the tobacco leaf, is tied up, and there are -- and this, when it's tied up with its original form -- when it's made synthetically in the plant, this is not as active as when it is freed up with ammonia.
So what ammonia really does is increase the powerful attributes of nicotine by changing it from a semi-inactive form to a more biological -- a more human acceptable form.
Q And when you were with Brown & Williamson, did Brown & Williamson utilize ammonia technology to enhance the effect of nicotine in their cigarettes?
A Yes.

Q If a corporate executive for Brown & Williamson were to declare that Brown & Williamson does not do anything to enhance the nicotine delivery to smokers, would that be true or false to your personal knowledge?
MR. OHLEMEYER: Objection. It's an argument, calls for a comment on someone else's testimony who hasn't been put before the jury.
THE COURT: Sustained. Do you want to rephrase that?
MR. MOTLEY: Well, Your Honor, I think I need to approach before I ask this question then.
THE COURT: All right.
(Bench discussion)
BY MR. MOTLEY:
Q Doctor, are you familiar with something called a nicotine patch?
A Yes, I am.
Q When you were vice president of Brown & Williamson, did Brown & Williamson, to your personal knowledge, investigate getting into the nicotine patch business?
MR. WAGNER: Judge, objection,

relevancy, has nothing to do with any of the issues in this case. Now we're off into another area yet that just has nothing to do with anything here, Judge.
MR. MOTLEY: Your Honor, it has to do with the addictive nature of the nicotine in the product which Your Honor has allowed as part of the dangerous nature of the product in question.
THE COURT: All right. Objection is overruled.
MR. WAGNER: May I have a continuing objection, Your Honor, on the basis of relevancy?
THE COURT: Show that, Counselor.
Repeat your question.
Q Doctor, to your personal knowledge and your

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personal involvement, was Brown & Williamson investigating, while you were with the company, getting into the nicotine patch business?

A I would have to say it's bigger than Brown & Williamson. The TSRT charged Mr. Pritchard to evaluate the acquisition of a nicotine patch company, a company by the name of

Stoic.

Q How do you spell that?

A S-T-O-I-C. Stoic had some proprietary technology to be able to deliver nicotine through a patch that was placed on the skin and would be delivered a constant dose of nicotine.

I was asked to evaluate what the market opportunity, what was going on with nicotine patches by Mr. Pritchard in response to this TSRT request.

I went through an evaluation which looked at the market share of the various companies and how the nicotine patches worked. There was considerable conversation within the company relative to the acquisition of a nicotine patch business for the following two reasons: One, the nicotine patch is normally associated with cessation of smoking.

Q Trying to quit?

A To quit. Usually associated with trying to quit smoking. And that the more the nicotine patch business grew, the more business it would take away from the

cigarette companies.

And so we evaluated and the company evaluated the options of acquiring this nicotine patch company, but ultimately decided not to acquire it because it was in the cigarette business and this was not a form of nicotine delivery they wanted to get into.

Q And ultimately the company decided not to get into that business?

A Yes.

Q Doctor, I don't want you to do anything but follow closely what I'm about to ask you.

MR. MOTLEY: Your Honor, I'm handing the witness for identification purposes 30941 and 35974.

Q I want you to read what's highlighted to yourself, not out loud.

Have you looked at both of them, sir?

MR. WAGNER: Judge, can I approach for a minute?

THE COURT: Sure.

(Bench discussion)

THE COURT: Go ahead, counsel.

Q Dr. Wigand, one of the documents is dated

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1983 and one of the documents is dated 19- --
A '79.
Q -- 79, both of which were before you got there; correct?
A That's correct.
Q With respect to the discussion of the issue of nicotine, as are in those documents -- and listen carefully -- is the substance of the discussion about nicotine in those documents that predates your arrival consistent or inconsistent with the position of the company when you were with the company as vice president of research and development; yes or no?
A Yes.
Q It is consistent?
A Yes.
MR. MOTLEY: We offer them in evidence.
MR. OHLEMEYER: Same objections, Your Honor.
THE COURT: Objections have been made at the Bench, including whether or not this is a violation of a prior court order.

It is not. Objection is noted and overruled. 30941, 35974 will be admitted.
(Plaintiffs' Exhibit(s) 30941, 35974 received in evidence.)
MR. MOTLEY: We offer them only against Brown & Williamson, Your Honor.
THE COURT: As to Brown & Williamson only, ladies and gentlemen.
Q The first document, Doctor, is 30941. Do you have that?
A Yes, I do.
Q And would you confirm for me, sir, 30941 is dated 1979, ten years before you came to the company. Do you see the word wholly addicted to cigarettes, "addicted" being in quotes?
A Yes, I do.
Q And turn to page 3, please.
MR. OHLEMEYER: Your Honor, again, this witness isn't here to read evidence to the jury.
MR. MOTLEY: I can publish this document.
THE COURT: I agree. I agree.
MR. MOTLEY: I'm publishing the

document, Your Honor, and then asking him a question as soon as he finishes publishing it. I can't ask him a question with reference to the document till I publish it.
THE COURT: You want him to read what, Counselor?
MR. MOTLEY: I asked him to read the term "wholly addicted to cigarettes" and

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now I'm asking him to read into the record Item No. 3 on page 3. And then I'm going to ask him a question.

THE COURT: He can do that.

Q Do you have page 3 in hand, sir? Dr. Wigand, do you have page 3?

A Yes, I'm sorry.

Q Look at the bottom, the second No. 3, okay?

"We are searching explicitly for a socially acceptable addictive product involving a pattern of repeated consumption, a product which is likely to involve repeated handling. The essential constituent is most likely to be nicotine or a direct substitute for it."

Then on page 4, "If assumption No. 3 --" which we just read -- oh, and then it

said, "The product must be non-ignitable to eliminate inhalation of combustion products and passive smoking."

Do you see that?

A Yes, I do.

Q "If Assumption 3 is regarded as a commercially acceptable objective, then we would propose that research should be undertaken into the way nonsmokers and stable ex-smokers combat the various benefits listed in the earlier table without the need for nicotine. We also think that consideration should be given to the hypothesis that the high profits additionally associated with the tobacco industry are directly related to the fact that the customer is dependent upon the product. Looked at another way, it does not follow that future alternative product X would sustain a profit level above most other product business activities unless, like tobacco, it was associated with dependence. If, in fact, it were not able to sustain a high profit level, then there is no A priority --"

What does that mean, sir?

A No priority, no first priority to get it in.

Q "-- reason why tobacco companies should take the risk of investing in a new speculative area but rather should consider investment into established business. That being the case, one must question both the ethics and the practical possibilities of society medical opinion permitting the advent of the new habituation process, especially if the product were unable to permit governments to obtain a high level of duty income from the product."

Now, Doctor, was your assignment to investigate a nicotine patch business consistent with your observations of the company looking for different ways to get in

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the nicotine delivery business?
MR. OHLEMEYER: It's an argument, Your Honor.
THE COURT: Overruled.
A Yes.
MR. MOTLEY: I won't ask him any questions about the other one at this time, Your Honor.

Q Now, Doctor, let me ask you, for the record again, tell us who Alan Heard is.
A Alan Heard was group R & D director for the CAC companies.
Q Doctor, did you have, when you were with the company, a discussion with, was it Dr. Heard?
A I believe so.
Q Any discussions with him with respect to trying to reduce harmful environmental tobacco smoke encountered by nonsmokers from cigarettes?
MR. OHLEMEYER: Objection, Your Honor, it's argumentative.
THE COURT: Overruled. You may answer.
A Yes.
Q Was Mr. Heard -- did Mr. Heard express to you in a group-wide need to develop some way to cut down on harmful environmental tobacco smoke?
MR. OHLEMEYER: Objection, Your Honor, it's argumentative, it's leading and calls for hearsay.
THE COURT: Overruled.

Q Did you?
A I'm sorry, I --
MR. MOTLEY: Have her repeat the question.
(The requested material was read by the reporter.)
A Yes.
Q And what was discussed between you and Dr. Heard or Mr. Heard with respect to how to cut down on harmful environmental tobacco smoke?
MR. OHLEMEYER: Same objections, Your Honor.
THE COURT: Noted and overruled. You may answer.
A Some ways of cutting down on environmental tobacco smoke, and, again, I must define what it is. Is partly the smoke that comes from when the cigarette is burning without being puffed on. The second part is what the smoker exhales. That's the total part.
You really can't control what is exhaled.
Q What the smoker exhales?
A What the smoker exhales, but you surely can

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control what is burned during the process in which the cigarette is not being puffed on.

So the discussions were how to change the paper, add burn retardants to the paper, add different burn retardants to the tobacco. Changing the mass of the tobacco rod.

Q While you were there from 1898 --

MR. MOTLEY: Boy, I've been here a long time, Judge.

Q From 1989 to 1993 -- let's just do 1989 to June 1991, did Brown & Williamson offer for commercial sale a cigarette that was less harmful from the standpoint of the release of harmful chemicals in sidestream smoke?

MR. OHLEMEYER: It's argumentative, Your Honor.

THE COURT: Overruled.

A No.

Q Doctor, I'm just about done. I need to ask you some personal questions.

You got fired?

A Yes.

Q Did you get along with Mr. Sandefur?

A In the beginning, yes, but it deteriorated

over time. So the answer, at the end, no, I didn't get along with him.

Q Did you have a dispute with Mr. Sandefur about something called coumarin?

A Yes, I did.

Q Explain what coumarin is.

A Coumarin is an additive that imparts a sweet flavor characteristic to tobacco.

Q Is that an additive to tobacco products or was it an additive?

A Well, it was an additive to cigarette tobacco products, but it was an additive that was used in pipe tobacco by Brown & Williamson.

Q All right. And are you familiar with a substance called Coumadin?

A Yes.

Q What is Coumadin?

A Coumadin is in the same family as coumarin, but it is an agent that dilutes blood. It's a blood thinner.

Q And on a previous occasion did I get confused about the difference between Coumadin and coumarin? Me?

MR. OHLEMEYER: Your Honor, I

object to the relevance of that.

MR. MOTLEY: In asking him questions, did I confuse the two terms.

THE COURT: It's a fair question.

A Yes.

Q Now, Coumadin is an ingredient in rat poison?

A Yes.

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Q Coumarin is not.
A That is most certainly true.
Q Coumarin was in cigarettes at one time, to your knowledge?
A It was in cigarettes and was taken out in the mid-'80s.
Q Why?
A Because it was no longer --
MR. OHLEMEYER: Objection, Your Honor, lack of foundation.
THE COURT: Overruled.
MR. OHLEMEYER: No personal knowledge.
Q Go ahead, Doctor. You can answer.
A Coumarin was an additive used by the tobacco industry. Additives that are used by the tobacco industry are generally on a list

called GRAS. Generally recognized as safe. That's a designation by the FDA, Federal Drug Administration. It was removed from tobacco products in the '80s, cigarette smoking products in the '70s, because it masked odors and it also was shown to be toxic in various laboratory animals.
Q Did you learn, sir, that it had been removed from cigarettes but was it still being used by Brown & Williamson? And I'm only asking you in the context of the dispute you described with Mr. Sandefur, okay?
Did you have a dispute with Mr. Sandefur about Brown & Williamson using coumarin in other products although they had taken them out of cigarettes?
MR. OHLEMEYER: Objection, Your Honor, relevance.
THE COURT: Overruled.
A A significant dispute.
Q And what was coumarin being used in that you disputed the use of with Mr. Sandefur?
A Coumarin was continued to be used in a pipe tobacco, even though it was directly against B&W's additive policy. It had been removed

from the GRAS list and really was continued to be used in pipe tobacco because, one, a suitable substitute hadn't been found; and two, it did not need to be reported to Health and Human Services as all additives had to be reported on cigarettes. And because it was used in pipe tobacco, they did not have to report it to the health agencies looking at additives.
Q So you had a dispute with Mr. Sandefur. In January 1993 he became the chief executive officer; correct?
A Well, he became chief executive officer in January. The dispute predated that.
Q Okay. You had a long running dispute with him?
A Yes.

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Q And he fired you.
A Or caused me to be fired, yes.
Q And afterwards you were involved in some litigation with Brown & Williamson?
A Yes.
Q And Doctor, do you hold a grudge against Brown & Williamson?
A I wouldn't say I hold a grudge. I am angry

that I was hired to do one thing and didn't get to do it. I mean, there are other things that have happened since I left.
Q I don't want to get into details. I'm just asking --
A I don't believe I hold a grudge.
Q Doctor, when you first applied to go to work with Brown & Williamson, how much time elapsed between the application and the hiring? Do you understand my question?
A Yes.
Q How long?
A Approximately six months.
Q Did you provide them with your credentials?
A Several times.
Q Curriculum vitae?
A Yes.
Q You hold a Ph.D.
A Most certainly.
Q You hold a master's degree?
A I hold two master's degrees.
Q And you hold a bachelor's degree?
A And a bachelor's degree.
Q Doctor, on your resume, did you list the dates that you were accepted for those

degrees as opposed to the day you actually had a degree handed to you?
A Yes.
Q And how does that happen? I mean, were you told you had been awarded a Ph.D. and then you've got to wait until the next graduating class or how does that work?
A Normally you finish the course work in your defensive thesis and that goes through a process. I was already in my Ph.D. program before I received my master's degree.
Q And were you notified that you had received a Ph.D.?
A Yes, I was.
Q You have a Bachelor of Arts Degree in Chemistry?
A I have a Bachelor of Arts Degree in Chemistry from State University of New York at Buffalo.
Q And a master's degree in biochemistry?
A From the Medical School and from the School of Biomedical Sciences.
Q And a Ph.D. degree in biochemistry?
A From the same school.
Q And you've told us your subspecialty was in

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what?
A Study of hormones or endocrinology. I worked at Children's Hospital to do my Ph.D. degree.
Q And on a previous occasion did you have a dispute with one of the companies you worked with and did you leave that company, one of the health care companies?
A Yes.
Q Which one was that?
A A company called Bioscience.
MR. MOTLEY: Excuse me one second, Your Honor.
Q Doctor, do you intend to charge for your time being here the last two days?
A No way.
Q Pardon?
A No way.
Q You're not going to charge us?
A No way. That's not why I came.
MR. MOTLEY: Thank you, Doctor.
No further questions, Your Honor.
THE COURT: Thank you, Mr. Motley.
Ladies and gentlemen, you may pass down those exhibits, would you, please.

MR. OHLEMEYER: May I, Your Honor?
THE COURT: Just give me a minute.
Cross-examination, Mr. Ohlemeyer.
MR. OHLEMEYER: Thank you.

CROSS-EXAMINATION
BY MR. OHLEMEYER:
Q Mr. Wigand, just so I'm clear, did you go to medical school?
A I did not -- I went to a medical school that offered a degree in biochemistry. It was --
Q You didn't go to a medical school to get a medical degree; right?
A No.
Q And you don't have a medical degree?
A I never said I had a medical degree. I have a Ph.D. degree from the State University of New York at Buffalo, School of Medicine and Biomedical Sciences.
Q Is your Ph.D. in endocrinology?
A My Ph.D. is in biochemistry with a specialty in endocrinology.
Q Here's what I want to do. I want to go back to a few things Mr. Motley talked with you about this morning and then we'll jump back to where you started yesterday.

First thing I want to talk to is this think called coumarin. There are organizations around the world that publish lists of things that can and can't be used in cigarette products; right?
A That's correct.
Q One of those organizations is in England and it's known as the Froget Commission; right?

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A That's correct.
Q And coumarin is on the Froget list; right?
A For U.K.
Q Which means that that organization has reviewed it and pronounced it okay to use it in tobacco products.
A Outside the United States.
Q There is no list in the United States that says you can't use coumarin, is there?
A For tobacco products?
Q Correct.
A I don't think any of the additives that are used in the United States have any approval to be used on tobacco.
Q Let's take it a step at a time. Coumarin is on the Froget list as okay to use in tobacco products; right?

A For U.K. but not for the United States.
Q That's because the Froget committee regulates the United Kingdom; right?
A That's correct.
Q Then there is a group in Germany that puts out a different kind of list, a list of things you can't use. Right?
A That's true.
Q Now, in the United States there is no list like that, is there?
A There is no regulation of additives that are used in tobacco products.
Q That's not entirely correct, is it?
A That are regulated?
Q Every year the companies that make cigarettes in this country give the Department of Health and Human Services a list of everything they add to tobacco in the manufacture of cigarettes, don't they?
A With the exception of using coumarin, yes.
Q They provide them with a list, don't they?
A They provide a list to Health and Human Services, yes, they do.
Q There's a law that tells them how they provide that list to Health and Human

Services; right?
A I'm not sure about the law.
Q Weren't you involved in that when you were at Brown & Williamson?
A Peripherally, yes.
Q And the law requires the Department of Health and Human Services to issue a report to Congress if they think there is anything on that list that's a problem; doesn't it?
A That's correct.
Q Now --
A But coumarin wasn't on the list.
Q Now, Mr. Motley asked you about Exhibit 30941. Do you still have that in front of you?
A Are we finished on coumarin?
Q Yes, we are.

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A Who wrote this? I can't tell who wrote this. There is no signature and the signature on the last page, if there is a signature, I can't read.
Q Do you know if anyone ever received this in the normal course of their business? It's not addressed to anybody, is it?
A I don't know who received it, no.

Q Do you know if anyone did receive it and said to themselves, this isn't right, we disagree with this?
A I can't tell you that. I wasn't there for the conversation in 1979.
Q So the fact of the matter is you don't know anything about the events that are described in Exhibit 30941, do you?
A I don't know what you mean by that question.
Q Well, you weren't there; right?
A That's clearly correct.
Q And you don't have any personal knowledge of the events that are being described in this piece of paper, do you?
A I don't have personal knowledge of the events of this paper, no, I don't.
Q Next topic. Let's talk about Mr. Sandefur. This much is true, isn't it? Mr. Sandefur is dead.
A I believe so, yes.
Q And Mr. Sandefur was the person at Brown & Williamson who fired you?
A That is correct.
Q And there is no way for Mr. Sandefur or for any of the companies in this lawsuit to

prove that he did or didn't say any of that, is there?
A Other than my recollection, my direct experience with that.
Q Now, you've previously testified, though, that Mr. Sandefur didn't say, or didn't make comments about getting kids hooked, haven't you?
A I don't believe so. You'll have to show me line and page.
Q Well, let me read you some questions and answers that were asked at your deposition.
MR. MOTLEY: Tell me where we are.
MR. OHLEMEYER: I will. In the Kentucky deposition, Volume 13.
MR. MOTLEY: Volume 13?
MR. OHLEMEYER: Page 2728. 2729, I'm sorry.
Q You were asked these questions and gave these answers, Mr. Wigand. There was discussion about Mr. Sandefur's statement, the question is, "And you, sir --" at line 5. "And you, sir, testified here that he said he wanted to get kids hooked and that wasn't true.

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"Answer: I did not say that.
"Question: That wasn't true, was it?
"Answer: I will qualify it.
"Question: That wasn't true, was it?
"Answer: No. I will take that back. That part I'll take back."
Do you remember those questions and those answers?
A Vaguely. But I'd like to see it.
MR. MOTLEY: May I approach the witness with the deposition so he can see it?
THE COURT: Go ahead.
Mr. Ohlemeyer, show him the passage you referred to, if you would, Counselor.
MR. MOTLEY: Our page numbers are different, Your Honor.
I've got what purports to be Volume 13, Your Honor, but the page numbers are 2000 --
THE COURT: He has it.
MR. MOTLEY: He's got it? Can I look over his shoulder?
THE COURT: Go ahead.
A Mr. Ohlemeyer, I think you're taking some things out of context here. There is a lot

more conversation that goes on here in this deposition. If we go back to page 2727 --
Q Excuse me, Mr. Wigand. The question I have is did you give that answer to that question? Those were the answers you gave to the questions I read; right?
A It's not clear what I'm taking back here.
THE COURT: Doctor, he asked you whether you made that answer. That calls for a yes or no.
A Yes.
Q Now, let me ask you about Exhibit 9108. Do you have that in front of you, the one that talks about moist snuff?
A Uh-hum.
Q What it really talks about is product litigation outlook involved in marketing a new moist snuff product, doesn't it?
A That's the attachment to the memo.
Q Well, this isn't a scientific document, is it?
A No. It was created in part by the scientific department in cooperation with legal. If you haven't read the last sentence on the last page, it was

Dr. Deiner's collaborated in this memo.
Q But there is a memorandum from the assistant general counsel, a lawyer at the company --
A Yes.
Q -- to his boss talking about the product litigation outlook involved in marketing a new moist snuff product; right?
A Yes, it is.

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Q And at the time this was written, people had brought lawsuits against manufacturers of moist snuff, hadn't they?
A I believe so.
Q And, in fact, moist snuff was something that you were particularly interested in when you were at the company; isn't that right?
A That I -- yes.
Q In fact, as I recall one of your evaluations, your annual employment evaluations pointed out that you had placed a great deal of effort into the development of a moist snuff product; isn't that right?
A At the direction of Mr. Sandefur I did, yes.
Q Let me ask you about the Hirayama study. Tell us what the Hirayama study was.
A Hirayama study was a study conducted in

Japan of the effect of environmental tobacco smoke on nonsmoking wives.
Q How many Hirayama studies were there?
A I don't recall.
Q What were the -- do you know how the study was conducted?
A I don't recall at this time, no.
Q Do you know what the Surgeon General said about the Hirayama study when it was published?
A I don't recall.
Q Do you know what the American Cancer Society said about the Hirayama study when it was published?
A I don't recall at this time.
Q What can you recall about the Hirayama study besides what you've told us?
A I can tell you it was discussed when I visited Shook Hardy & Bacon. We discussed ETS, and lots of the other epidemiology studies that had been done.
Hirayama was gone over as a paper during that session with Shook Hardy & Bacon lawyers as well as some of the other studies that linked environmental tobacco smoke,

environmental tobacco smoke to pediatric diseases.
Q Do you know whether the Hirayama study had been critically discussed in correspondence since its initial publication?
A By whom?
Q By members of the scientific or medical community.
A No, I don't.
Q So with respect to Mr. Motley's Exhibit 140, where he asked you to talk about new data, you don't have any idea what the reference to new data in that document means, do you?
A I thought we already went over that territory, but I have no idea what the new data was at that time.
Q Now, it's a fact, isn't it, Mr. Wigand, that

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the company was concerned about the relationship between environmental tobacco smoke and disease?
A Which company?
Q Brown & Williamson.
A I think all the BAT companies were aware of the issues associated with environmental tobacco smoke.

Q And by the time you started working at Brown & Williamson, the Surgeon General of the United States had concluded that there were health consequences of involuntary smoking; isn't that right?
A I believe so.
Q A reasonable and responsible company would certainly be concerned about something like that, wouldn't they?
A I believe so.
Q Now, let me ask you a couple other questions about scientific matters. The phrase "biological activity" that was referred to yesterday. That's not some kind of code word for cancer, is it?
A I didn't suggest it was a code word for cancer.
Q In fact, it's a word that the Surgeon General and others have used to describe what happens when you conduct certain types of experiments; right?
A I believe a number of people discussed what biological activity is. And within the tobacco industry we understood biological activity as related to the effect of tar on

a biological system.
Q And that is something that had been discussed in the medical and scientific literature since 1953; right?
A It's been discussed for a long time.
Q When Dr. Wynder did the first mouse skin painting experiment; right?
A I believe so.
Q In fact, a lot of work that tobacco companies had been doing over those years was designed to reduce the amount of biological activity in those types of experiments; right?
A I'm not sure that's true. I don't know of any company that has ever published any data, other than Premiere, that asserts that the cigarette that they are producing or the engineered product that they're producing reduces biological activity.
Q Let me read you something the 1981 Surgeon General's Report said on that subject and ask you if you agree with it or if it's consistent with your understanding of what happened:
"Cigarette --" on page 85. "Cigarette

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smoke condensate --" that's what they do when they collect the tar; right?

A Yes.

Q -- "of present cigarettes produces fewer tumors on mouse skin than did that of cigarettes tested some 30 years ago."

So that sentence means that the biological activity of cigarettes sold in 1981 was lower than that of cigarettes sold in 1951. Right?

A Yes. And I have to also point out to you that cigarettes before that period of time were non-filtered cigarettes and cigarettes, I believe, tested there were filtered cigarettes. And a part of removing -- using a filter is to remove some of the tar.

Q Let me read the next sentence to you and see if you agree with this.

"This difference -- the difference in biological activity is probably because today's cigarettes contain more tobacco stems and more reconstituted tobaccos and have cigarette paper with higher porosity, all contributing to smoke condensate that is less tumorigenic to the experimental

animal." Right?

A That's what you're reading. I assume what you are reading is correct.

Q So you told us yesterday about reconstituted tobacco.

A Yes.

Q The fact that people used reconstituted tobacco was not a secret; right?

A I don't think I portrayed it as a secret.

Q In fact, the Senate has suggested it was a good thing to do.

A In 1981.

Q And there have been other organizations that have looked at the issue of reconstituted tobacco and expanded tobacco as a means of reducing biological activity; isn't that right?

A I think you can use expanded tobacco as one way of reducing biological activity.

Q You're familiar with the Banbury report?

A I'm not familiar with that, no.

Q You don't know what the Banbury report is or was?

A No.

Q You mentioned yesterday something called

nitrosamines. Do you recall that?

A Yes, I do.

Q The fact that nitrosamines are present in tobacco and tobacco smoke is not a secret, is it?

A No, it's not a secret.

Q In fact, that's something else the Surgeon General and others have talked about for

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some time in the medical and scientific literature; right?
A They have talked about the cancer-producing effects of nitrosamines, yes.
Q And nitrosamines occur in a variety of other substances or sources that people encounter in their day-to-day life, don't they?
A They could, yes, but not in the same direct manner.
Q They have a widespread distribution in dietary vegetables and grains, don't they?
A That's correct, but they don't inhale them.
Q They're present in bacon and other cured meats?
A They're also present in bacon and other cured meats but that goes in the digestive system and that breaks down nitrosamines.

Q They're present in beer?
A Most likely, yes.
Q You can't tell us, Mr. Wigand, whether the lung is more or less efficient than the liver in metabolizing nitrosamines?
A I can tell you what goes into the lung goes directly into the bloodstream. What goes into the liver gets metabolized and passed out some way.
Q Let me ask you about Exhibit 21387. Do you have that in front of you?
A Yes, I do.
Q This is a document that is entitled "BATCO," British American Tobacco Company; right?
A Yes, it is.
Q Chairman's Advisory Conference, March of 1983; right?
A That's the title.
Q You didn't attend this meeting, did you?
A No, I did not.
Q The No. 2 paragraph says that "The top priority of the research and development department should continue to be -- should continue to be given to reducing the level, the defined biological activity, and the

visibilities of sidestream smoke in order to combat social acceptability pressure"; right?
A That's what it reads, yes.
Q No. 3 says, "The critical importance of continuing the research program by GR & DC aimed at understanding the basic chemistry and physics of tobacco processing was fully endorsed"; right?
A I don't see how that relates to No. 2.
Q Well, you have to understand basic chemistry and physics of tobacco processing before you can reduce the biological activity of a tobacco product, don't you?
A Not necessarily.
Q And on the back page, paragraph 29, Mr. Motley asked you about; do you know how

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the corporate structure of BAT Industries or British American Tobacco Company changed between the time this document was written and the time you started working at the company?

A I know some of it. I don't know all of it.

Q We'll get to that in a minute.

Now, yesterday, Mr. Wigand, you told us

that you started working at Brown & Williamson when?

A January 1989.

Q Now, am I correct you didn't leave the health care industry to go to Brown & Williamson; right?

A In a manner of speaking I did, yes.

Q In a manner of speaking you were actually in between jobs at the time, weren't you?

A That is correct.

Q So the company Mr. Motley asked you about was the last job you had before Brown & Williamson. Was that right?

A That is correct.

Q That was U.S. Biosonics?

A Biosonics.

Q And when did you leave that company?

A Sometime in October 1987, I believe.

Q So at some point in time between October of '87 and January of '89, you saw an ad in the newspaper of the Wall Street Journal and began the interview process at Brown & Williamson; right?

A I wasn't only interviewing with Brown & Williamson. I was interviewing with other

health care companies.

Q You didn't have any prior experience in the tobacco industry or with tobacco chemistry or with tobacco science, did you?

A No, but they hired me.

Q Well, my question, sir, was did you have any prior experience before January of '89 in tobacco chemistry or tobacco science or the tobacco industry?

A Directly in the tobacco industry, no.

Q And by the way, you told us about Judo yesterday.

A Uh-hum.

Q Were you ever on the Olympic Judo team?

A No. But I sparred with the Olympic team.

Q So you draw a distinction between sparring and being on the team?

A Yes. I was part of the team.

Q Now, you left Brown & Williamson, as Mr. Motley said, in March of '93; right?

A I think I said that.

Q And that wasn't a voluntary dismissal; right?

A No. I was fired.

Q And just so we're clear, by fired, you mean

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they asked you to leave?
A They terminated my employment, yes.
Q And before you started working at Brown & Williamson, you had some training in science; right?
A I had substantial training in science.
Q You knew and you were aware that there were risks associated with cigarette smoking?
A Most clearly.
Q Cigarette packages and advertisements in this country had warnings on them, Surgeon General's warnings?
A Most certainly.
Q And you knew that in 1964 the Surgeon General had concluded that cigarette smoking was a cause of disease?
A Yes.
Q And you knew that in 1988 the Surgeon General had concluded that cigarette smoking was an addiction?
A That's correct.
Q By the way, before you started at Brown & Williamson, did you do any research or do any studying on the subject of cigarette smoking and health?

A As I said yesterday, I reviewed the public literature on smoking and health issues, yes, I did. I looked at the genetic engineering of tobacco.
Q And there were also some patents you could have reviewed on things like that, too; right?
A I believe there were some patents I could have reviewed, yes.
Q Patents are publicly available; right?
A Uh-hum.
Q That deal with the design, construction and manufacture of cigarettes?
A Some of them do, yes.
Q Do you know what the Tobacco Working Group was?
A For?
Q The Tobacco Working Group?
A I'm aware of it, yes.
Q What was it?
A It was a group put together to look at the aspects of the tobacco and smoking and health.
Q Who put it together?
A I'm not quite sure.

Q Were you ever part of it?
A No, I was not.
Q Now, do you know what the Technical Study Group was?
A For addiction propensity?
Q Correct.
A Yes.
Q What was that?

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A That was a group that was put together to look at developing a methodology for assessing the ignition propensity or fire safety of cigarettes.
Q Put together by the government.
A Put together by the government, yes.
Q Including fire chiefs and fire specialists; right?
A Yes.
Q People from cigarette companies?
A Yes.
Q Public health people?
A Yes.
Q Engineers and other scientific people?
A I don't know if engineers were part of that study group.
Q Now, am I correct that one of the ways --

and by ignition propensity, what you're talking about is if you drop a cigarette, will it go out or will it start a fire; right?
A No. I think that's one definition. I think you can have another definition.
Q Which is what?
A Well, one that would continue to smolder but would not ignite a fire. And one which would self-distinguish. That would be two different approaches.
Q One of the ways to accomplish some of those things is to reduce the circumference of the cigarette; right?
A That was demonstrated by them, right.
Q Make it smaller.
A Uh-hum.
Q Now, Brown & Williamson sold a cigarette that had a reduced circumference while you were there, didn't they?
A Yes.
Q It was called Capris; right?
A Yes.
Q Sometimes when you design and manufacture cigarettes, if you solve one problem you

create another problem, don't you?
A That's possible. That's a possibility, yes.
Q And those are called tradeoffs; right?
A Yes.
Q For example, when you reduce the circumference of a cigarette, you increase the amount of carbon monoxide that it gives off, don't you?
A I'm not sure of that.
Q Well, let me hand you a research report entitled "The Effects of Circumference on Mainstream Deliveries and Composition Progress Report 2" dated February of 1989 distributed to you. That's a research report that was created while you were at the company; right?
A Yeah, early on.

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Q And two copies of it were sent to you; right?
A And I had been at the company only two months.
Q And turn the page. Do you see the highlighted portion at the bottom?
A Yes.
Q That indicates that when you reduced the

circumference of a cigarette, you increase the carbon monoxide that's given off; right?
A That's a general statement that's here. It says that if you -- as you reduce the circumference, carbon monoxide and carbon dioxide occur. Carbon dioxide doesn't hurt anybody. Carbon monoxide may.
Q In fact, the Surgeon general makes -- puts a warning on the sides of cigarette packages that talks about carbon monoxide, doesn't it?
A Yes.
MR. MOTLEY: Your Honor, we move the introduction of that document.
THE COURT: What's the number of that document?
MR. OHLEMEYER: I haven't numbered it, Your Honor, because I don't intend to offer it.
MR. MOTLEY: He's asked him about it.
THE COURT: We'll mark it for identification. Be a Defendants'.
MR. OHLEMEYER: Okay. I'll mark it W-20.

THE COURT: W-20?
MR. OHLEMEYER: Yes.
THE COURT: I'm not going to admit it at this point, Counselor. You may want to re-ask that during your redirect.
MR. MOTLEY: Yes, Your Honor.
Q Now, Mr. Wigand, before you started working at Brown & Williamson, you were aware of the fact that the Surgeon General and others had identified certain substances in cigarette smoke that were believed to be carcinogens under certain circumstances; right?
A Yes.
Q That fact is not anything you couldn't have learned by going to a library and reading books on the subject; right?
A That's what made cigarettes hazardous, that's why I thought when I went to the company that I would be developing a safer cigarette.
Q Now, when you got to Brown & Williamson -- strike that.
When you left Brown & Williamson, you had been there just about what, three years, four years? Four years; right?

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A Yes.
Q That was the longest job you had to that point; right?
A That's true.
Q And during the entire time you worked there, you never threatened to resign?
A No.
Q You never tendered your resignation; right?
A No.
Q You were not what you would call a hands-on researcher, though, at Brown & Williamson, were you?
A No.
Q In fact, you were hired, in a manner of speaking, to help manage, organize the research department; right?
A Among other things.
Q That had been one of your strengths in your prior employments. You thought you were a good organizer and a good manager.
A A lot of people believed I was a good organizer and manager.
Q At that point in time that was a philosophy that was getting a lot of discussion in business and management journals; right?

A I don't know what you're talking about, philosophy.
Q Well, let's put it this way: When you got to Brown & Williamson, you never performed any actual research in the laboratory, did you?
A No.
Q You never authored a research report?
A No.
Q Within the first 12 months that you were at Brown & Williamson -- after the first 12 months you were there you got evaluated; right?
A Yes.
Q That was a standard part of your employment?
A Yes.
Q Every year you got a performance appraisal. Right?
A Yes.
Q And as part of that process you got to list your goals and objectives for the year, didn't you?
A That's correct.
Q You got to list what you thought you had accomplished for the year; right?

A Yes.
Q And in the first year you were there, you summarized one of your accomplishments as implementing a legal writing seminar in conjunction with Brown & Williamson's legal department and outside counsel to correct past deficiencies noted in R & D writing practices; right?

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A Yes. I did that at the direction of Mr. Sandefur.
Q That's not what you wrote in your performance evaluation, is it?
A That I did it at the direction of Mr. Sandefur?
Q Correct.
A There's many things I did in the course of my job that were directed by Mr. Sandefur that are not reflected in the performance appraisal.
Q At that point in time Mr. Sandefur wasn't your boss, was he?
A Yes, he was.
Q Who is Mr. Kohnhorst?
A Mr. Kohnhorst didn't come on board until early 1990.

Q So in 1990 Mr. Kohnhorst was your boss?
A Yes.
Q And who was Mr. Pritchard?
A He was the chairman and CEO.
Q So he was Mr. Kohnhorst's boss?
A He was Mr. Sandefur's boss.
Q So when Mr. Kohnhorst got there, who was his boss?
A Mr. Sandefur.
Q So Mr. Sandefur moved up to become your boss' boss while you were at Brown & Williamson?
A I don't understand what you mean by that. He was the president and chief operating officer when I got there and until he became chief executive officer and chairman he was president and chief operating officer.
Q So he got a job that was a promotion while you were there?
A No.
Q Chief executive officer is not a promotion?
A Oh, in January of 1993, yes, he did.
Q And you left in March of '93?
A Yes.
Q Now, the other thing in your first year for

your career objectives you wrote is that in 1990 you -- first of all, you said that your knowledge base was limited through exposure and tenure. What did that mean?
A My knowledge base of the tobacco industry and how the tobacco industry operated was limited, and I was learning.
Q And you wanted to initiate a legal briefing session in preparation for either litigation or witness activities relating to the possible exposure due to the Kennedy Bill; right?
A Yes, I was directed to do that.
Q That's not what it says here.
A I understand that.
Q It says career objectives to be completed by individual; right?

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A That's correct.
Q And it says that you should write down what you think are objectives that you are interested in or relevant to your areas of interest; right?
A That's not done in a vacuum, Mr. Ohlemeyer. That's done in conjunction with your senior manager.

Q But it doesn't say senior management doesn't want me to do this.
A That is correct.
Q The fact of the matter is, when you started working at Brown & Williamson, they had been and were involved in lawsuits.
A I believe so.
Q And they had been and were involved in issues of regulation and legislation; right?
A I believe so.
Q And you wanted to become familiar with those issues and meet with the people involved in those issues in case you had to get involved in them; right?
A I was aware of the issues of regulatory involvement, and I was particularly aware of the issue of perhaps the FDA would regulate the tobacco industry, and that's what the Kennedy Bill refers to.
Q Now, in your second year -- so your first year's evaluations were when? December of '89; right?
A Yes. That's correct.
Q The second evaluation would have been when? How about January of '91; right?

A I'm assuming. I haven't seen the document that you're referring to. You may want to share a copy with me so I can read along with you.
Q I've given you a copy of your second evaluation; right?
A Uh-hum.
Q And it was Exhibit 102 at your deposition; right? You've seen it before; right?
A I believe so, yes.
Q Do you see on the back page where it says supervisor?
A Uh-hum.
Q Who was your supervisor?
A Earl Kohnhorst.
Q So Mr. Sandefur wasn't your supervisor, was he?
A No, he wasn't.
Q He was the next level of management above Mr. Kohnhorst; right?
A That is correct.
Q And your supervisor's evaluation was that you had made a solid contribution; right? Page 3.
A That's part of it, yes.

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Q But he also said there was a broad area that needed improvement; right?
A You'll have to give me what paragraph you're going to.
Q Do you see the last paragraph on page 3, the one broad area that still needs improvement --
A Uh-hum.
Q -- involves transition between R & D and other functional groups.
A Yes.
Q What does that mean?
A Needs improvement. Everybody needs improvement.
Q What were functional groups?
A Engineering, manufacturing, purchasing.
Q Significant issues had developed as activities moved outside of R & D; right?
A Uh-hum.
Q And they wanted you to put more effort into personally communicating more directly with people; right?
A That's what this says, yes.
Q They were concerned that you weren't a hands-on manager; right?

A Doesn't say that.
Q Well, they wanted you to put more effort into personally communicating with people you were working with; right?
A That means me talking personally to people rather than through my staff.
Q And they didn't want you to delegate as much to people you were working with; right?
A I was trying to develop a management organization. Delegation is part of managing and developing people.
Q But they thought you were doing a little too much of it; right?
A It doesn't say that.
Q Well, they wanted you to take a higher level of involvement with hands-on experience and better communications; right?
A That's what part of it says, yes.
Q Page 7.
A You're reading this out of context of the whole paragraph. I mean, you're just taking the negative points, I think, and highlighting them.
Q Well, sir, it was an area they wanted you to improve; right? It was an area they checked

that said needed development; right?
A On the first page, I don't believe so. I'm talking about page 2.
Q Am I correct, sir, that one of the things they wanted you to develop was a more hands-on approach to your work with other people in the company and other groups of the company; right?

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A That is one area of improvement, but if you read the rest of what is said on page 1, it says lots of other positive things that I was able to do.
Q I'm not suggesting it doesn't but what I'm suggesting is at this point in your career they had identified an area of your management style that needed improvement; right?
A I would hope everybody would have improvement areas in management.
Q So the answer to my question is yes; right?
A Yes.
Q So now, on page 5, your supervisor puts down his evaluation; right?
A Uh-hum.
Q And again, third paragraph, after saying

some things about your support of product quality and the R & D's department work, it says that several issues have arisen that demonstrate that you need to pay more attention to follow-up and better communications; right?
A Uh-hum.
Q Page 6, it continues by saying that you need to better understand details to allow you to more effectively integrate outside activities and focus the priorities of your technology development group; right?
A That's what it says.
Q And they suggest you take a higher level of involvement with more hands-on experience in enhanced communications; right?
A That's what it says.
Q On page 7 they said you had some problems with your relationship with the director of product development; right?
A Yes. He needed performance improvement. That's what it says.
Q And on page 8, last sentence, too often projects have been delegated as a first step giving away opportunities for you to

establish firm understandings at more senior levels; correct?
A That's one sentence out of that paragraph, yes.
Q And on page 9, they suggested that you spend more time focusing on hands-on relationships with your peers; right?
A I don't see where it says that. The last paragraph? It would help me if you direct me to where you're reading from.
Q Last sentence to the last paragraph on page 9.
A Uh-hum.
Q So as early as your second year at the company there was some concern on the part of your supervisor about your relationship with people you were working with.

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A I had not been part of the tobacco industry. I came in from outside and, of course, I had to learn how to deal with the party line or how Brown & Williamson dealt with things and communication was highlighted.
Q And actually doing work yourself and getting involved in things as opposed to delegating it to others; right?

A That's what it says.
Q Now, your third evaluation --
A Can I just correct the dates on that? The date is not done in January of 1991. It was done actually in May of 1991.
Q On the front page it says date, January 16, 1991.
A I would refer you to page 11, to when it was read, when I sat down with it was in May of 1991. So you need to correct that.
Q Well, that's when you had the discussion with your supervisor and had an opportunity to discuss it with him; right?
A Uh-hum.
Q It was prepared on or about January 16 of 1991; right?
A That's when I submitted it.
Q And, again, this process is you get to submit things, they submit things, it gets written up, you sit down and you talk about it; right?
THE COURT: You have to answer.
A Yes.
Q And at this point in time Kohnhorst -- Mr. Kohnhorst is your boss?

A That is correct. On paper.
Q Well, on paper it says he's your boss. He was the person you reported to.
A As I said, on paper. There were a lot of bosses I had.
Q Let's go then to the next year. This is your third-year evaluation; right?
A Uh-hum.
Q And this occurred sometime in early '92; right?
A It was signed off in June of 1992.
Q Well, it was actually signed by your supervisor in February of '92; right? Page 12.
A Yes.
Q At this point, again, you had the opportunity to provide input; right?
A Yes.
Q And you were evaluated and your supervisors evaluated your skills; right?
A Yes.
Q And on page 6A they pointed out to you that there was some issues on personal judgment that they wanted you to address; right?
A Yes.

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Q They pointed out that you had shown poor judgment in excesses in dealing with executive perks; right?
A That's what it says.
Q That you were frequently challenged on expense statements; right?
A That's what it says.
Q And that your behavior was placing a shadow on your judgment in creating an integrity gap; right?
A That's what it says.
Q And that was a serious charge, wasn't it?
A Yes, but there are definitely some explanations that go with that.
Q And you considered it to be a serious charge at the time, didn't you?
A I consider all performance appraisals a serious matter.
Q Now, in July of 1992, Mr. Kohnhorst talked with you about your situation at Brown & Williamson; right?
A I don't recall that.
Q Well, let me hand you what were marked as Exhibits 104 and 105 at your deposition. You've seen those before; right?

A Yes.
Q And --
A I finally saw them in the deposition in 1996. Or '97, I'm sorry. That was the first time I saw them.
Q But I'm correct, am I not, that Mr. Kohnhorst had discussions with you and actually sat down and spelled out the seriousness of the situation with you, didn't he?
A I'm not so sure that's correct.
Q Let me ask you if you remember answering these questions at your deposition about that.

MR. MOTLEY: Could we have a page, please?

MR. OHLEMEYER: Sure. 3563 -- Volume 19, and 3563, line 2.

Q In July of 1992, Mr. Kohnhorst was your supervisor; right?
A Yes.
Q And he sat down with you and spelled out the seriousness of the current situation with respect to your employment; right?
A That's what this says.

Q And that's what you testified to in June of 1997.
A I'd have to look at line and page again.
Q Let me ask you if you remember this question and this answer. Page 3652. Line 18.

MR. MOTLEY: 3,652?

MR. OHLEMEYER: Yes, Mr. Motley. That's how many pages it was.

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Q Question: "Okay" -- line 18 -- "Well, in July of 1992, he says he sat down with you and spelled out the seriousness of the current situation. That's the memo that you're referring to.

"Answer: Yes, that transpired.

"Question: He says that he talked to you in July of 1992, and he referred to his memo.

"Answer: Uh-hum.

"Question: And at that time he talked to you about the deterioration of personnel and organizational relationships that have made you ineffective both inside and outside of B&W?"

You said, "That's correct. That's what he says."

"Of particular note is the fact that his behavior and contribution has made him unwelcome among several BAT-associated companies where he has become a hindrance to important cooperative activities."

Do you recall that conversation with Mr. Kohnhorst?

A Now I recall it, parts of it.

Q And then in -- I'm sorry, that was February of '93; right? February 3rd, 1993.

A Uh-hum.

Q And then in July of that year you had another conversation with him; right? In July he told you that things hadn't gotten any better and that you ought to start looking for a job; right?

A In July of 1993, I was already fired.

Q I'm sorry. In February of 1993. After the July meeting you had another meeting in February of '93; right?

A We may have, yes. I'm not totally clear, but yes, I believe we may have.

Q And you were told that you ought to start looking elsewhere for employment; right?

A That's what the memo says. I'm not sure

that that transpired.

Q Well, do you disagree with the characterization of the deterioration of personal organizational relationships?

A I think that's an overstatement.

Q Is it a fact, sir, that a month or so after your July discussion with Mr. Kohnhorst, he told you things were not getting better and it would be best if you considered looking elsewhere for employment?

A I never remember that conversation.

Q And one of the reasons he thought you ought to do that is because your management style had not improved; right?

A That was his opinion.

Q And you were fired in March of '93; right?

A That is correct.

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Q Now, before you got to Brown & Williamson, most of what you had done was marketing or management in general business; right?
A I had done technical management, technical marketing, yes.
Q And after you left Brown & Williamson, you spent some time looking for a job.
A Yes, I did.

Q And you wanted to find something that was commensurate in salary or position with what you had at Brown & Williamson?
A Initially, yes.
Q And you end up teaching, as you told us; right?
A That is correct.
Q Then recently you've been retained as a consultant to Mr. Motley; right?
A That is correct.
Q And I think you said something yesterday about tobacco control.
A That is correct.
Q Mr. Motley is not a tobacco control spokesman, is he?
A I didn't suggest that Mr. Motley was a tobacco control expert.
Q I'm not suggesting you did either, but he's not, is he?
A I don't think so, no.
Q And Mr. Motley has had you down to South Carolina to work with him?
A Yes, he has.
Q You stayed at his house?
A I have.

Q Stayed on his boat?
A I have.
Q Met with other lawyers at his firm?
A I have.
Q Mr. Westbrook?
A Yes.
Q Ms. Ritter?
A Yes.
Q Ms. Flowers? Mr. Wagner?
MR. MOTLEY: Who?
A Mr. Wagner? I think it's Ms. Wagner.
Q I'm sorry. Mr. Rice?
A Yes.
Q Mr. Patrick?
A Yes.
Q You basically recently spent a few months down there; right?
A Correct.
Q Now, you also -- did you quit your job as a teacher to do that, to stay in Charleston?
A I'm not in Charleston yet.
Q Pardon me?
A I live in [DELETED], at the present time.
Q Did you say I'm not in [DELETED] yet?

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A I'm looking to relocate to [DELETED].
Q You're looking to move to [DELETED].
A Yes, I am. I said that yesterday.
Q You get paid to consult with other lawyers on tobacco issues; right?
A What do you mean by other lawyers?
Q Well, you've consulted with a lawyer by the name of Dicky Scruggs; right?
A I've never consulted with Dicky Scruggs.
Q How about Steven Fine?
A I consulted with Steven Fine, yes, in 1994.
Q And he's a lawyer who had sued a cigarette company on an issue related to fire-safe cigarettes; right?
A That is correct.
Q And you consulted with a law firm representing ABC in a lawsuit that had been brought by Philip Morris against ABC?
A Yes.
Q And after you were fired by Brown & Williamson but before you began working with plaintiffs' lawyers, you testified about lawyers and Brown & Williamson, didn't you?
A Yes, I did.
Q And you were asked whether you were aware of

any fraudulent or improper behavior by Brown & Williamson in the sale and manufacture of cigarettes; right?
A That's correct, yes.
Q And you testified you were unaware of any fraudulent or inappropriate behavior by Brown & Williamson in the sale and manufacture of cigarettes; right?
A That's correct, but I'm not a lawyer. Those are lawyer terms.
Q And you also testified that you were unaware of any intention by Brown & Williamson to use its inside or outside lawyers to commit any fraud or to further any fraud; right?
A As it relates to fire-safe cigarettes.
Q And it was your sworn testimony, wasn't it, Mr. Wigand, that Brown & Williamson, its lawyers, and lawyers it hired, had not committed any fraud and not made any misrepresentations in the sale or manufacture of cigarettes; isn't that right?
A As it related specifically to fire-safe cigarettes.
Q Well, let me find that testimony. Page 1591, Volume 10. "Question: Brown &

Williamson, its lawyers, its inside counsel --"

MR. MOTLEY: Can you give me one second. 1591, what volume? Your Honor, if Mr. Ohlemeyer is intending to now read into the record something from the Justice Department, I suspect we better --

MR. OHLEMEYER: All I'm doing, Your

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Honor, is asking the witness about a question and answer he gave at a deposition that was taken in July of 1996.

THE COURT: Go ahead.

MR. MOTLEY: Excuse me, Your Honor, I think we better approach on this.

THE COURT: All right.

(Bench discussion)

THE COURT: Go ahead, Mr. Ohlemeyer.

Q The question, sir, is, "Are you aware --"

THE COURT: Now, refer to the deposition. State the deposition to which you are referring, Counselor.

Q This is a July 19, 1996 deposition taken in a lawsuit in Kentucky, and at page 1590, line 4, as it relates to the manufacture --

as it relates to, you ask, as it relates to the manufacture and sale of cigarettes -- I'm sorry, let me back up.

"Are you aware of any criminal or fraudulent behavior by Brown & Williamson?"

MR. MOTLEY: Your Honor, did you hear that?

THE COURT: I heard that.

MR. MOTLEY: Okay. I now ask for a relief from the motion in limine.

MR. OHLEMEYER: Let me rephrase the question.

MR. MOTLEY: No, sir. No, he's already stated it in the record.

THE COURT: I'll take that under advisement. Go ahead, read the question.

Q Page 1591, sir, line 5, you remember this question and this answer:

"Brown & Williamson, its lawyers, its inside counsel, its outside counsel have committed no fraud, no misrepresentation on the part of them or their counsel in the manufacture and sale of cigarettes."

Your answer was, "And I believe I would say the same thing today."

A That came out of my civil investigative demand, it called for a legal conclusion. I'm not a lawyer and that was a subject of a Department of Justice investigation.

THE COURT: I think his question was was that your answer?

THE WITNESS: That was my answer but I think I need -- if I can qualify it, sir?

THE COURT: Just answer his questions.

A Okay. That's what I said.

Q Now, Mr. Wigand, despite everything you told us today and everything you told us yesterday, at the time Brown & Williamson fired you, you told them you were still willing to work for Brown & Williamson,

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weren't you?
A Yes, I had a family and --
Q The answer is yes.
A Yes.
Q And you even tried to get a job at other tobacco companies; right?
Let me rephrase the question. After you left Brown & Williamson, you wrote RJ

Reynolds and you wrote Lorillard looking for a job; right?
A That's not correct.
Q Let me hand you, sir, what we'll mark as W-21 and W-22 for identification.
MR. MOTLEY: You got two or one?
MR. OHLEMEYER: I'm sorry.
Q Tell us what those are, Mr. Wigand.
A These are a letter to RJR, these are people I knew, and I think what I'm asking for is a copy -- I enclosed a copy of my resume and I was networking.
"I would appreciate your help in directing me to anyone you may know who might be in the need of an experienced professional in senior operations and R & D management."
This was a personal friend I had met.
Q Who is that?
A Ferdinand Krull, director of research and development of RJR Germany.
Q Do you mind if I take a look at that? "You were somewhat acquainted with my professional experience. I want to let you know about my decision to seek a new career

opportunity. I would really appreciate your help in directing me to someone you know who might have the need for an experienced professional in senior operations and R & D management."
A That's what it says.
Q And you sent that to the director of research and development at Reynolds in Germany?
A Yes.
Q You also sent one to the executive vice president of Lorillard?
A Yes, same letter.
Q You sent the same letter to a lawyer at Shook Hardy & Bacon, didn't you?
A Yes.
MR. MOTLEY: May I see that, sir? I would like to see the letter to Shook Hardy & Bacon.
MR. OHLEMEYER: It's right here.
Q After March of 1993, you became a paid consultant to the FDA?
A That's not correct.
Q An unpaid consultant to the FDA?
A That is correct.

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Q A paid consultant to 60 Minutes?
A Only for fire-safe work, yes.
Q And what 60 Minutes wanted you to do was to give them some advice about some documents relating to another cigarette company's work; right?
A That is correct.
Q And you also sent some letters around to other people offering your services as a consultant on that subject; right?
A I may have. I'd have to -- you have to refresh my memory.
Q Paul Johnson at D.C. Thompson Company?
A That's not a tobacco company.
Q What was it?
A D.C. Thomas, I think, was a publishing company in Scotland. Am I not correct? If my memory serves me.
Q You were willing to help provide them an interpretation of the 60 Minutes documents; right?
A That is correct.
Q Were you a paid consultant for them?
A For whom?
Q For D.C. Thomas?

A No, I was not.
Q You suggested, in lieu of a consulting fee, they can indulge you with a case for single malt scotch. Do you remember that?
A Yes. He told me he would provide me with a single malt scotch if I would help him.
Q I thought people from Kentucky only drank bourbon.

MR. MOTLEY: He's from New York.

Q Let's talk about Exhibit 10322. Do you have that in front of you?
A I've got so many papers. Can you direct me to a title? Yes, I've got it.
Q Turn over to the section entitled "Environmental Tobacco Smoke."
A Would you just give me a page, please.
Q It's the fifth page. This is the Tobacco Strategy Review Team meeting; right? Which again is something you didn't -- a meeting you didn't attend; right?
A No, I did not.
Q What it says in this document is that environmental tobacco smoke continues to be a major issue in a majority of the group's markets; right?

A That's correct.
Q With regulatory authority suggesting that exposure to ETS may be harmful to nonsmokers; right?
A That's what it says.
Q It's dated 1990?
A That is correct.
Q The research team in Southampton had built

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up a considerable database on levels of ETS in real world environments and have published these results widely. Right?
A That's what it says.
Q So we'll talk about Southampton, but the research team in Southampton -- that was part of British American Tobacco Company; right?
A That's correct.
Q -- had studied the level of ETS in the real world and published the results of their studies?
A They had looked at ETS, I believe in train stations, some other environments I can't recall right now, but they looked at it in some environments where smoking was done.
Q Then there is a lot of discussion in this

about budget proposals; right?
A That is correct.
Q Now, the fact of the matter is, isn't it, that a considerable amount of ETS or sidestream research was conducted at Brown & Williamson while you were there?
A I don't believe there was any work related to ETS conducted at Brown & Williamson when I was there. I believe there was work conducted on sidestream smoke.
Q Well, do you recall a project that was outlined in 1989 to reduce sidestream smoke?
A You would have to refresh my memory of the document.
Q Let me hand you what we've marked as W-1, Mr. Wigand. This is a memo that was written in May of 1989; right?
A Uh-hum.
Q And it summarizes a program to develop products giving reduced total sidestream; right?
A Yes.
Q And your name -- you're copied on the distribution; right?
A That is correct.

Q Let me hand you what we've marked as W-2.
MR. MOTLEY: Your Honor, are we going to put these in evidence?
THE COURT: I don't know. Are you going to offer them?
MR. MOTLEY: I offer them.
MR. OHLEMEYER: Your Honor, I haven't offered them.
MR. MOTLEY: I offer them.
MR. OHLEMEYER: I don't think Mr. Motley can offer them until I'm through questioning the witness about them.
THE COURT: Continue with your question.
Q In August of 1989, right, a meeting that was held with Kimberly Clark; right?
A That's right.

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Q An outside vendor, supplier?
A Uh-hum.
Q On reduced sidestream; right?
A That's correct.
Q Again, your name is copied on this?
A That's correct.
Q Let me hand you what we've marked as W-3. It's a memorandum, a research and

development memorandum written to you; right?
A Yes, in 1990.
Q Subject: Update on reduced sidestream; right?
THE COURT: You have to answer.
A Yes.
Q Let me hand you what I've marked as W-4. Phase I development of a low sidestream cigarette; right?
A Yes.
Q Distributed to you?
A That's correct.
Q "The objective of Project Aquarius is to develop a low sidestream 100 millimeter cigarette with a mainstream delivery of 12 milligrams of tar and to out-perform Vantage Excel in both sidestream reduction and taste"; right?
A That's what it says.
Q And Vantage Excel was a product of a competitor.
A Yes, it was.
Q This is W5. This was an effort to find a cigarette paper that gave off less

sidestream smoke; right?
A Yes, it is.
Q "Because to date, none of the commercially available low sidestream papers had been satisfactory." Right?
A That's was it says.
Q It describes the work the company did on that subject.
A Developing a paper, yes.
Q Let me hand you W6. "1991 Project Aquarius Concerning the Development of a Low Sidestream Cigarette"; right?
A That's the title.
Q And that was a document that was sent to you; right?
A I was copied on it, yes.
Q From the product development department; right?
A Yes.
Q Actually -- in fact, all of these, sir, are stamped from the R & D library; right? Not all of them but most of them?
A Yes, they're in the R & D library, yes.
Q Which means somebody generates the document, sends it to a number of people, it goes to

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the library, gets stamped and put on the shelf?
A It says on the distribution two copies go to the library.
Q And let me hand you what we've marked as W7, again, from 1991. This is a trip report that was sent to you about a visit they had at a paper mill where they were trying to get them to reduce sidestream paper; right?
A Yes.
THE COURT: Speak up.
A Yes.
Q So the fact of the matter is that there was a fair amount of work that went on while you were there with respect to sidestream smoke, the results of which were written up, put in the company's library; right?
A I believe so, yes.
Q Now, I want to talk to you about this meeting that you told us you vividly remembered in Vancouver; right?
A Yes.
Q That was a meeting that occurred in September, though, not October; right?
A I think I corrected myself yesterday, yes.

It happened September 19th rather than October 19th.
Q And Alan Heard actually is at British American Tobacco Company; right?
A Alan Heard wore two hats.
Q Well, I don't want to know about his hats. I want to know where he worked. He was identified in that document as an employee of British American Tobacco Company; right?
A Yes.
Q And British American Tobacco Company is a different company than BAT Industries; isn't it?
A Yes.
Q In fact, at the time you started at Brown & Williamson, BAT Industries owned insurance companies; right? Isn't that right?
A No. I'm not sure.
Q They owned department stores, didn't they?
A Yes.
Q They owned a paper company?
A Uh-hum.
Q And they owned tobacco companies; right?
A Yes.
Q Including British American Tobacco Company;

right?
A Uh-hum.
Q Brown & Williamson; right? Souza Cruz?
A So far you're correct, yeah.
Q A Canadian company and a German company, right?
A That's correct.
Q You told us about something called BATUS,

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B-A-T-U-S. Did BATUS even exist when you started working at Brown & Williamson?
A Yes, it did.
Q Now, the heads of R & D for each of these companies, these were called the CAC companies; right?
A Yes, they were.
Q And that means what, cigarette --
A Cigarette affiliated companies.
Q And the heads of R & D for each of these groups got together and were called the what, the RPG group?
A Research policy group, yes.
Q And that was that meeting in Vancouver; right?
A That is correct.
Q And just so we're clear, what's the SRG?

A Scientific research group.
Q And that's not a part of BAT Industries, is it?
A Yes, it is.
Q What is it?
A What is it? It was a group assigned to do scientific research for --
Q From these companies?
A That's correct.
Q Not this company. From the CAC companies. Now, the exhibit that you told us about yesterday, the draft --
A That's correct, yes.
Q -- was a list of everything that got said at the meeting, right?
A No. It was the minutes of what was said at the meeting, not everything that was said at the meeting.
Q So it's minutes?
A It's minutes of the meeting, yes.
Q And it includes a list of discussions about all kinds of things these companies and these companies are thinking about doing; right?
A It was a discussion among the scientists of

what they thought the research activities ought to be for the CAC companies.
Q And the CAC companies shared some research, didn't they?
A Yes.
Q There was a place in Southampton, right, that did fundamental research for these companies; right?
A FRC, yes.
Q And what that means is its research that could apply generally to any of these companies; right?
A It was fundamental research, it was discovery research, yes.
Q Basic research, yes.
A Some of it was basic research and some of it was applied research.

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Q But for the most part, though, the difference is applied research got done at the companies; right?
A In general, most of the applied research got done in the companies, but there was also applied research done at the Fundamental Research Center.
Q That's because applied research is research

that relates to the products that these people are selling?
A It could, yes.
Q These people all sell cigarettes but they sell them in different markets where people have different preferences and there are different regulations?
A They're still cigarettes.
Q But the applied research that B&W wants to do may be different than the applied research Canada wants to do; right?
A It could be, yes.
Q But the fundamental research relates to everybody?
A Yes, it does, but they also have done applied research at the Fundamental Research Center.
Q At that meeting there was a lot of discussion about what kind of program needed to be implemented in South Hampton on ETS; right?
A Yes, there was.
Q And one research activity was to look at how ETS ages or changes; right?
A I believe so, but I'd have to go back to the

minutes again.
Q The short version of the minutes, the one you told us about yesterday, is a list of what people were going to do, right, the things to do?
A The short version, no. The short version was the 12 pages edited by a lawyer to reflect non-controversial issues that were discussed at the meeting.
Q It was the list of what people agreed to do; right?
A The short version? I don't think so.
Q Well, let me ask you if you remember Volume 20, page 3783, question --
MR. MOTLEY: Could you give us a second to get that, please. Give me volume 20. Page what now?
MR. OHLEMEYER: Page 3783.
Q "Question: You've testified that the final minutes represented the agreements made at Vancouver for projects to be undertaken; right? That's what you've testified earlier to today?
"Answer: And/or discussions.
"Question: The final minutes, the

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final minutes, okay, all they contained was the agreement of things to do; right?

"Answer: Uh-hum.

A That's what it says, that's what it says.

Q And Southampton did do research that was discussed at that meeting, didn't they?

A Yes, it did.

Q And that was fundamental research, wasn't it?

A Above and beyond fundamental research, yes.

Q And the results of that research were published in reports and sent to you; right?

A I received those reports, yes.

Q And they included reports on compounds in environmental tobacco smoke under sealed room conditions; right?

A Yes.

Q They included compare --

A I'd have to see the document, but I assume what you're telling me is the truth.

Q They included comparing methods of assessing exposure to environmental tobacco smoke in nonsmoking British women.

A Uh-hum.

Q They included measuring environmental

tobacco smoke in air-conditioned office buildings.

A That's the work done by Chris Proctor, yes.

Q They included the contribution of exhaled mainstream smoke to environmental tobacco smoke.

A Uh-hum.

Q They included determining the amount of Solanosel in environmental tobacco smoke, they included studies of sidestream smoke by laser photomicroscopy; right?

A Yes.

Q They included the development of a low permeability magnesium oxide paper to reduce sidestream; right?

A Uh-hum.

THE COURT: You have to answer yes or no.

A Yes.

Q They included reports on the influence of cigarette paper surface area on sidestream yields, right?

A I believe so, yes.

Q And all of these reports were sent to you at Brown & Williamson, weren't they?

A I believe so, yes.

Q Your name is on all of them?

A All the final reports I received, yes.

I don't see how that relates to the discussion of Vancouver.

Q Well, there was a discussion in Vancouver about things to do with respect to ETS; right?

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A That is correct.
Q And there is no question the stuff got done, right, the work got done?
A Yes, that's true, some of the work got done and some of the work got reported, yes.
Q And the results of that research got reported.
A Yes.
Q Now, Doctor, let's talk about ammonia for a minute?
THE COURT: Counselor? I think I'm -- do you have a little bit more?
MR. OHLEMEYER: A short one.
Q You talked about impact; right?
A Yes.
Q And impact means something -- it's a term of art, isn't it?

A I don't know what you mean by term of art.
Q Well, what impact means is what you feel in the back of your throat when you take a puff on a cigarette; right?
A It's associated with when -- impact is also associated with a nicotine rush that occurs when you smoke a cigarette, yes.
Q Well, Volume 20, Counsel, page 3831.
"Question: Do you know how Brown & Williamson defines impact boosting?
"Answer: Yes.
"Question: How does it define it?
"Answer: Irritation when it hits the back of the throat due to nicotine."
That's what impact is, right? They call it mouth feel sometimes; right?
A I think I just said the same thing.
Q And ammonia is a substance that occurs naturally in tobacco.
A At very low levels, yes.
Q It occurs when you burn tobacco, you can find it in the smoke; right?
A Tobacco not treated with ammonium compounds?
Q Correct.
A Low levels, yes.

Q It can be and has been added or used in the manufacture of tobacco as a processing aid; right?
A I don't know what you mean by processing aid.
Q When people make reconstituted tobacco, they sometimes use ammonia to release the pectins that bind everything together?
A I'm not sure you're technically correct, but I believe diammonium phosphate is used and phosphates link the pectins back together. Ammonia has nothing to do with it.
Q Well, ammonia doesn't have anything to do with the most successful brand of cigarettes that Brown & Williamson has ever sold, does it?
A Which is Kool?

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Q Kool.
A Not that I know of.
Q There is no ammonia technology used in Kool; right?
A As of the time I was at Brown & Williamson, no, but we were looking at ways of incorporating ammonia into Kool.
Q But Kool was Brown & Williamson's biggest

seller when you were there?
A Yes.
Q And it did not use ammonia technology, did it?
A No, but we were looking to attempt to incorporate ammonia technology into Kool.
MR. OHLEMEYER: All right, Your Honor. Do you want to break for lunch?
THE COURT: We'll take the noon break, ladies and gentlemen. We'll break until 1:15. Remember to leave your notes in the jury room.
(Standard admonition)
MR. CASSELL: All rise.
THE COURT: You can step down, Doctor.
We're still on the record. Mr. Motley, there was a request to lift the Court's order in limine as to a matter?
MR. MOTLEY: Yes, Your Honor. We move that the prohibition of us discussing matters relative to criminal procedures regarding Brown & Williamson be lifted in light of Mr. Ohlemeyer's insertion of that into this record.

THE COURT: Just as to Brown & Williamson?
MR. MOTLEY: Just as to Brown & Williamson.
MR. OHLEMEYER: Your Honor, I inserted nothing in the record. I asked a witness about a question he answered under oath at a deposition.
MR. MOTLEY: I stood up immediately, Your Honor, and I asked you to take note of what he said. And the record will clearly reflect that Mr. Ohlemeyer introduced the word criminal conduct of Brown & Williamson into this trial.
MR. OHLEMEYER: The witness never answered that question, Your Honor. Mr. Motley has introduced word after word into this case and that hasn't been the basis of anything. I asked the witness about a question or a statement he had made under oath and Mr. Motley objected to the question I asked. I didn't receive an answer from the witness. I asked the next question and we moved on. I don't understand what he's trying to do here.

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MR. MOTLEY: What I'm trying to do, as Mr. Ohlemeyer well knows, that there are criminal matters related to Brown & Williamson going on, and for him to stand up and suggest to this jury after Your Honor has admonished us not to mention criminal matters is a violation of Your Honor's in limine order.

MR. OHLEMEYER: All I asked this witness was whether he thought that lawyers or the company had committed fraud or done anything improper. We've heard hours of what Mr. Motley thinks the lawyers have done that's improper. This witness can't judge the criminality of anything Brown & Williamson has done, and I think he answered the question the only way he could, and he answered it and we moved on. I don't understand what Mr. Motley thinks he's going to ask this witness to do.

THE COURT: Counsel, I'm going to review the exact comments, because I made some notes along that line of questioning. And this has to do with paragraph 12 of the Court's order which prohibits any reference

to any criminal investigations. That was the defendants' joint motion. All right. I'll take a look at what was actually said and the results and we'll start again at 1:15.

(A lunch recess was taken.)

MR. CASSELL: All rise.

THE COURT: Be seated. Thank you.

(Jury not present)

THE COURT: Jury is not here. There was a request that the Court relax the order on limine as to paragraph 12.

I went back and looked at the motion that precipitated the order filed January 2nd by Mr. Wagner, Mr. McIntire, specifically the motion prohibiting plaintiffs, their counsel, all witnesses from mentioning, whether in testimony, questioning, or argument, reference to criminal investigations including grand jury proceedings involving any of the defendants.

That motion was sustained. And the question is whether or not questions this morning opened the -- opened that matter up for further inquiry on redirect.

Deposition question referred to July 19, '96 deposition, taken in Kentucky, "Question: Are you aware of any criminal or fraudulent behavior by Brown & Williamson?"

That was Mr. Ohlemeyer's question. I took the matter under advisement. It seems clear to me that the matter has been opened up as to Brown & Williamson only.

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All right. Bring in the jury.
MR. MOTLEY: Should I get the witness now, Your Honor?
THE COURT: Certainly.
MR. CASSELL: All rise.
(Jury present)
THE COURT: Be seated. Jury reappears in its entirety, together with all three alternates.
Just have a seat, Doctor. Would you again state your name for the jury.
THE WITNESS: Jeffrey Steven Wigand.
THE COURT: You recognize you're still under oath?
THE WITNESS: Yes, I do, sir.
THE COURT: All right.

Cross-examination will continue, Mr. Ohlemeyer.

CROSS-EXAMINATION (cont.)

BY MR. OHLEMEYER:

Q Mr. Wigand, just so we're clear, the scientific research group was composed of employees of the CAC companies; right?

A Yes.

Q And these were the companies that actually made and sold cigarettes.

A Yes.

Q And Mr. Thornton was the head of that group; right?

A I believe so, yes.

Q And he was employed at BATCO, which is now known as British American Tobacco Company; right?

A BATCO or BAT Industries, I mean.

Q BAT Industries is a different company, isn't it?

A Yes, it is.

Q Okay.

A But he had dual roles, I believe.

Q And BAT Industries doesn't make cigarettes, do they?

A No.

Q Now, BAT, British American Tobacco Company, had a facility in Southampton that did research for all of these companies; right?

A Yes.

Q And Brown & Williamson had a facility in Louisville, where it did research for itself; right?

A Yes.

Q And during the time you worked at B&W, the reports from Southampton were routinely distributed to you; right?

A Final reports were, yes.

Q There were actually three types of reports that were distributed to you, right, a work program was sent around each year which summarized what Southampton was going to do?

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A Yes.
Q And then a biannual status review sent, was sent around to tell you what they were doing, in short form; right?
A Yes.
Q And then you got a final research report, like the ones we've talked about, where the research was done; right?

A You've read to them, but yes, go ahead.
Q That's right; right?
A Yeah. Well, I think there's a comment needs to be made about the final research reports.
Q Well, Mr. Wigand, all three types of these reports were sent to you because you were R & D director of one of the CAC companies; right?
A I received the final reports. Some of the final reports prior to receiving did not have some of the data that I see -- had seen from Mr. Heard.
Q Who is Mr. Heard?
A Alan Herd.
Q He worked at Southampton; right?
A No, he didn't. He worked at Millbank.
Q And Millbank, I'm sorry, Millbank is where British American Tobacco Company was; right?
A No, that's where BAT was, also.
Q Mr. Heard worked for British American Tobacco Company, didn't he?
A And he also worked for BAT Industries.
Q Who did he get his check from?
A I don't know who he got his check from, but he took his direction from Sir Patrick

Shehee as well as Mr. --
Q I understand what you think about where he got his direction, sir. I want to know if you know who paid him, who he worked for?
A Never asked him.
Q Now, the reports at Southampton were issued by a Dr. Baker; right?
A And Dr. Binns, yes.
Q And if you saw something in one of these reports from Southampton, you could pick up the phone and call Dr. Baker and ask for his data, couldn't you?
A Not necessarily true. I knew that I could not get all the data. I had seen data from Mr. Heard that never made it into the final reports, and I also knew that the system was such that I couldn't get the data anyway.
Q You remember this question and this answer, page 1109, Counsel, Volume 7:
MR. MOTLEY: Excuse me one second. Give us a second. Volume 7?
Q "Question: Sir, if you found a report of interest to you that was reported in the work -- in the annual, the work program annual reports, or in the FRC six-month

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reports, that was of interest to you, you could write directly to Dr. Baker and he would answer those questions for you or provide the data for you; would it not be true?

"Answer: Either Dr. Baker or Alan Heard or Mr. Binns.

"And that was at B&W, wasn't it?"

Your answer was, "I'm sorry?"

The question was: "That was to you at B&W?

"Answer: Yes."

A That's what I said, yes.

Q And when you got these reports from Southampton, you typically got two copies; right?

A Yes.

Q And your secretary stamped receipt that you received them; right?

A Yes. Yes.

Q And these reports from Southampton didn't say anything about attorney-client privilege or anything like that, did they?

A I don't believe so.

Q They didn't have any -- they didn't say

anything about Kendrick Wells or anything like that on them, did they?

A No, but I -- no.

Q The reports you got from Southampton while you were at Brown & Williamson included research on environmental tobacco smoke and sidestream smoke; right?

A I received final reports.

Q On those subjects.

A Yes.

Q Let me hand you what I've marked as Defendants' W-18. This is a letter to you written in July of 1990 from Richard Baker; right?

A Uh-huh.

Q And Richard Baker was one of these men at Southampton; right?

A He was head of research at Southampton, I believe, in 1990, yes.

Q For British American Tobacco UKE, right, BATUKE?

A No. I believe he was with BATCO. I think he served two roles, one for BATUKE and one for BATCO.

Q What he does here is list in chronological

order material on the research at Southampton that has been sent to Louisville; right?

A That's what this seems to relate to, yes.

Q And he points out on the second page that in late May of 1990 Alan Heard reminded you to send any comments on this work to him; right, to Mr. Baker. Do you see that at the

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bottom of the page?
MR. MOTLEY: Which document is this, now? What's the date on it?
MR. OHLEMEYER: This is --
A I don't know where you are.
MR. OHLEMEYER: July 23, 1990.
Q On the second page, sir, there's a reference to late May 1990?
A Yes.
Q It says in a telephone conversation Alan Heard reminded you, you, Mr. Wigand, Jeffrey Wigand, to send any comments on the proposed material science work, to me, meaning Mr. Baker; right?
A I normally provided my comments directly to Alan Heard.
Q Okay. But, you see on the back page --

A Uh-huh.
Q -- Mr. Baker was concerned that you weren't sending him any comments; isn't that right?
A I sent them to Alan Heard. That was my chain of command. That was who I talked to.
Q And Mr. Baker encourages you and all Brown & Williamson scientists to be involved as much as possible in formulating and reviewing the work program at Southampton; right?
A That's what this letter says, yes.
Q He welcomes you to send any suggestions you have on how to do it more effectively and over and above the procedures; right?
A I think that's what the letter says, yes, in 1990. July of 1990.
Q And the first paragraph of the letter, Mr. Baker says he's a little surprised that you're not happy with Brown & Williamson's ability to participate in that because of the large amount of material that he has sent from Southampton to Louisville; right?
A That's what it apparently says.
THE COURT: Speak up.
A I'm sorry, that's what it apparently says, yes.

Q You remember in March of 1990 he sent you papers giving detailed proposals on the key-most sensory tobacco and smoke chemistry of ETS and material science work programs?
A No, I don't remember it.
Q Are those the same types of things we talked about this morning?
A I don't know, you didn't show them to me this morning.
Q Those ones I showed you, the eight different reports on environmental tobacco smoke and sidestream smoke.
A I don't think you showed them to me. You read off the titles on them.
Q The fact of the matter is that Mr. Baker hadn't received any comments on the proposed material science work from you; isn't that

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right?
A I don't know. I can't comment on it.
Q Do you remember Alan Heard telling you to send any comments on this work to Mr. Baker?
A I don't recall that, no.
Q That's what it says here, though, isn't it?
A I haven't read the letters carefully. I'll read it.

Q Late May 1990?
A Yes, says per our telephone conversation, I talked to Alan Heard. I talked to Alan Heard regularly.
Q Did Alan Heard remind you to send any comments on proposed work to Mr. Baker?
A Yes.
Q And you didn't, did you?
A I don't recall. That's what this letter says on July of 1990.
Q So what this letter says is that you had the opportunity to provide input and direction to these people on research they were doing that you might be able to use at Brown & Williamson.
A I regularly gave input to Alan Heard. And I had regular meetings with Alan Heard and the people at FRC.
Q Do you have a copy of Plaintiffs' 9107 in front of you?
A I got a lot of documents now. Can you give me a title?
Q Let me see if I can help. Do you mind?
A No.
Q It was the discussion about a meeting in New

York. The agenda for that New York meeting you talked about.
A Yes.
Q This was someone's proposal, wasn't it?
A It was a proposal that became policy.
Q And it proposes that scientists should be educated about the documents they create and write; right?
A That's one part of it, yes.
Q Is there anything wrong with that?
A I think lawyers ought not to be involved in how scientists write what they write.
Q That was exactly what you said you wanted to do in your first year's evaluation, isn't it?
A That was something I was directed by Mr. Sandefur to be involved with, and the law department.
Q That's your testimony, sir, but that's not what it says in your employment evaluation, is it?
A Well --
Q Is that right?
A That's probably true.
Q Now, is there anything unusual about trying

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to ensure that each of these CAC companies only receive research reports from other companies from which they have identified a need and from which they will receive a benefit in terms of their current research activities?

A I think particularly if you're trying to hide something, yes, I think there's a problem with it.

Q Well, why would Brown & Williamson want something from Souza Cruz if they didn't have a need for it or if it didn't benefit them in their business?

A Who makes that decision, the scientists or the lawyers.

Q Well, sir, Souza Cruz has a lot of things that they don't send to Brown & Williamson, don't they?

A I don't know.

Q In fact, these companies -- well, that is a fact. You don't know.

A I don't know what Souza Cruz has sent and hasn't sent, no.

Q Now, proposal B, Ensure that all Telexes, letters, faxes go through and be approved by

the head of the research department, in the sending company.

That was your job when you were at Brown & Williamson; right?

A Yes.

Q Limit each company's access to the computer database so they can only see extracts of reports which are relevant to its current research activities. Nothing wrong with that, is there?

A Why shouldn't Brown & Williamson have full access to all research? They pay a cost sharing agreement.

Q They don't pay for the applied research that these other companies do, do they?

A No, but they get direct benefit from them.

Q What you pay for is the fundamental research that they do at Southampton, and that's what you got in those reports; right?

A Yeah, but there is an open sharing.

Q Yes or no?

A Yes.

Q Okay.

MR. MOTLEY: Your Honor, he ought to be allowed to answer the question.

THE COURT: I think he answered it.

MR. MOTLEY: Okay.

Q Is there anything wrong with tightening the document retention policy in each company to the extent permitted by current litigation discovery requests?

A I would think there is when you try to hide something.

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Q Well, sir, it doesn't say anything in here about hiding things, does it?
A Yes, it does.
Q It says -- read the words for us on No. 4.
A I think if you go back to the original part, Introduction, there's a concern for the volume of research documentation spread around the company. There's an issue associated -- difficulties faced by author company explaining documents in a foreign court, particularly if he's even a party to the proceedings to which those documents are produced. This is legal driven. This is driven by product liability. This is not driven by scientists.
Q We saw three documents yesterday with resect to this Vancouver meeting, is that right?

A Yes, you did.
Q We saw the minutes of the meeting?
A Uh-hum.
Q We saw a revision; right?
A That was done by an attorney that did not attend the meeting.
Q There was input from you.
A Very little input from me.
Q Your handwriting was on the document; right?
A That is correct.
Q Then we saw the short version; right?
A Uh-hum. Yes, we did.
Q Now, where do you think Mr. Motley got all three of those documents; do you know?
A I don't know where Mr. Motley got all three of those documents.
Q They came from the files of Brown & Williamson, didn't they?
MR. MOTLEY: Your Honor, may I approach?
THE COURT: All right.
(Bench discussion)
THE COURT: Go ahead, Mr. Ohlemeyer.
Q Now, Mr. Wigand, you got reports from this

scientific research group, didn't you?
A I got reports that had gone through -- had been vetted in some cases, yes, by lawyers.
Q What you got were reports?
A I got final reports, yes, I did.
Q That would tell you what that group was going to do each year; right?
A Oh, yes. General reports, yes.
Q And they would ask you to approve money that they would spend to do some of this research; right?
A No. They asked me to put input into the programs, come to consensus, and then the budget would be developed.
Q And there were times where you thought they were spending too much money on certain types of research; isn't that right?

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A There may have been a balance, I don't -- I can't recall specifically.
Q In fact, do you recall in -- after this Vancouver meeting we've talked about, that one of the things that that group was going to spend money researching and wanted you to help pay for was research on nicotine; right?

A Yes.
Q And you remember sending a letter to the people at British American Tobacco Company saying, you know what, I don't want to spend that much money on nicotine research.
A I don't recall that.
Q Well, let me hand you what we've marked as Exhibit W-22.
I'm sorry. Let me hand you what we've marked as W-21. This is a letter from you to a Dr. Boyce, right?
A Uh-hum. Yes, it is.
Q And it's talking about the 1990 SRG budget; right?
A Yes, it is.
Q And she wants to spend a certain amount of money on research; right?
A I think that's what it says. It doesn't say anything about nicotine research in this letter.
Q And she wants you to pay for some it; right?
A We had agreed in the 1989 RPG minutes to a certain budget. She was suggesting a higher budget without any details.
I wrote back saying, if my memory

serves me correct, I believe the 1989 RPG meeting, an agreement was reached the budget for 1990 would be around 280,000 pounds, not 344,000 pounds. It says nothing about what the content of what the SRG -- or the SRG activities would be.
Q Let's take it a step at a time. This SRG, this is the Vancouver meeting we were talking about yesterday and today; right?
A Yes.
Q And after that meeting there was some talk about who was going to spend what to do what; right?
A At the meeting there was a specific discussion of what the budget was going to be, yes.
Q Let me hand you W-22.
MR. MOTLEY: Your Honor, we move the admission of this document.
THE COURT: Well, you can do that on redirect.
MR. MOTLEY: Can I just do that as to all these documents so I don't interrupt?
THE COURT: All right. You remind me of that if I forget.

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MR. MOTLEY: Yes, Your Honor.
Thank you, Judge.
Q Let me hand you what I have marked, sir, as W-19. This was the list of what projects were going to be funded after that meeting; right?
A I don't know. This is an attorney document. It says attorney privilege on the top, so I -- I'm not so sure I've ever seen this document.
MR. MOTLEY: This is W what now?
THE WITNESS: W-19.
Q Dated May of 1990; right?
A It appears to be, yes.
Q And it talks about the contributions to the SRG budget for that year; right?
A Well --
Q There's a proposal there in the second paragraph for nicotine neurochemistry?
A Uh-hum.
Q And nicotine research; right?
A That's what it says here, yes.
Q Now, you then sent a fax to Dr. Boyce that talks about the SRG funding for that year; right? Actually you sent it before. You

sent it in April, didn't you?
A I don't know. I don't know what you're talking about. I haven't seen a document yet.
Q I thought -- did I hand it to you? Didn't I hand you your letter to Dr. --
A Oh, yes. You're talking about this document?
Q Yes.
A Okay. It says that I can agree with -- we agreed to a budget in the RPG meeting of 280,000 pounds, and you're proposing 344,000 pounds.
Q And you're reluctant to accept any further increase above that; right?
A I believe that's what I've said, yes.
Q Then you remember faxing something to Mr. Kohnhorst, who was your boss, where you attached the budget and said, "We need to resolve the escalating activity within the SRG funded research. I disagree with the increased spending and the" --
Let me ask if you can even read this. It's your writing. Mark this as W-26.
This is a letter or a fax from you to

Mr. Kohnhorst; right?
A A fax? I don't think so.
Q Well, it's a letter or a note; right?
A It's not a fax.
Q Okay. And what does it attach?
A There's a note to Earl Kohnhorst, I believe in my handwriting, "We need to resolve this escalating activity with SRG funded

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research. I disagree with the increased spending and" I can't -- "can we discuss."
Q And you didn't think that Brown & Williamson was getting any benefit from that kind of spending; isn't that right? That's what it says?
A No, it doesn't. It says I disagree with the increased spending. It doesn't say anything about benefit.
Q And what are the last four words, "and the value derived"; right?
A From the -- you can have different components going into a budget and different amounts of spending. I disagreed with the increased amount.
Q So you thought the SRG was spending too much money.

A In the programs that they were doing, yes.
Q And one of those programs they were doing involved nicotine neurochemistry?
A I don't know. Does it?
Q Well, let me point it out to you. Exhibit W-19, isn't Exhibit W-19 what was attached to your note to Mr. Kohnhorst?
A It may be.
Q Well, doesn't it look like it?
A Looks like it, yeah.
Q Isn't this discussion about nicotine neurochemistry?
A A proposal from Gray, nicotine neurochemistry in humans at 40,000 pounds per year for three years is recommended. Doesn't say take out the nicotine chemistry.
Q You just didn't want to spend that much money on it.
A No, I didn't want to spend money on other items, but there has to be a priority of items in any budget. The absolute money could be divided, could spend all 120,000 pounds on nicotine research. Here is a proposal, spend 40,000 pounds, roughly $120,000 a year on nicotine research.

Q They wanted to spend more, but you didn't want them to?
A No, that's not what this says. They wanted to spend more money. They didn't say on nicotine research, Mr. Ohlemeyer, you're confusing issues here.
Q That's what it says, doesn't it?
A No, it doesn't. I beg to disagree with you.
Q A proposal from Gray at 40,000 pounds per year for three years is recommended. 60 percent of the funding would be nicotine research; right?
A Yeah. Where have I disagreed with nicotine research? I'm sorry, I don't want to be argumentative, but --
Q Let's talk about something called Premier. By the way, you've talked about a safer

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cigarette. How would you define a safer cigarette?
A A cigarette that had less biological risks to those who were addicted.
MR. MOTLEY: May we approach for a moment, Your Honor?
(Bench discussion)
Q You know what Premier is, don't you,

Mr. Wigand?
A Yes, I do.
Q It's a product that RJ Reynolds put in the marketplace?
A That is correct.
Q It was a product that heated rather than burns; it heated tobacco, it didn't burn it; right?
A Not correct.
Q Well, you tell me what it is.
A It did not heat tobacco. It heated an extract of tobacco and nicotine.
Q It was a product that was supposed to be something that would create smoke that had less biological activity; right?
A That is the claim that RJR made, less biological activity in the nicotine delivery device. That's the claim they made.
Q Now, Brown & Williamson had a project to develop a similar type of product, didn't they?
A Yes.
Q It was called Airbus, wasn't it?
A Yes.
Q And Airbus was what you believed to be a key

element of a safer cigarette.
A Yes, that's -- yes.
Q It would have lower tar, lower nicotine.
A Just lower tar. I didn't say anything about lower nicotine.
Q Would have reduced sidestream smoke?
A Possibly could, yes.
Q It would be less prone to ignite things if it was dropped?
A Yes.
Q And that project began at Brown & Williamson before you even got there, didn't it?
A That is correct.
Q Wasn't something that you designed or you created.
A No, I did not design or create it.
Q It was an attempt to develop a prototype product that could compete with something like a Premier; right?
A That's part of it, yes.
Q And in trying to make that kind of product, Brown & Williamson had a few problems, didn't they?
A It had some technical issues, yes.
Q And because of those technical issues, they

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decided the research, the fundamental research on the product would be done -- that the applied research would stop and they would do more fundamental research before they tried to make another product like that; right?

A No, it was transferred overseas to Southampton, yes.

Q Okay. It's a fact, isn't it, it was technologically impossible to construct this type of cigarette at the time Brown & Williamson stopped working on it; right?

A No. I don't believe that's possible. I mean, I don't believe that's correct.

Q Well, do you recall this question and this answer being asked of you?

MR. MOTLEY: Volume?

Q Let me just hand you -- let me back up for a minute, Mr. Wigand.

What were the problems you had with Airbus? If you know.

A I can't recall at this time.

Q Too hot to hold, wasn't it?

A I'd have to see -- I can't recall at this time.

Q And am I correct that the work on the prototype was being done in Louisville?

A The work on the prototype was being done in Louisville, that's correct.

Q And it became technologically impossible to construct a product that wouldn't be too hot to hold, wasn't it?

A I don't believe that's the conclusion of it.

Q You do recall that more fundamental research was needed on the development of Airbus before it could be put in the marketplace; right?

A That I believe, yes.

Q And it was done at Southampton.

A It was transferred to Southampton, that is correct.

Q Because Southampton is the place that did the fundamental research.

A Among other things, yes.

Q Now, the project continued after 1989, didn't it?

A Project Nova continued, yes.

Q So this turned into Project Nova. Right?

A Yes.

Q And Brown & Williamson funded work on the

project to develop a Premier-type product at Southampton; right?

A Yes.

Q You paid -- Brown & Williamson paid for the research that was going on in Southampton.

A Yes.

Q Right? So the idea that you could make a product like this, or the project was never

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canceled; right?
A Transferred.
Q Transferred and continued somewhere else.
A Yes.
Q Now, you were told, were you not, in March of 1989, that the prototype work on the project, trying to make it a product, should stop until they got this fundamental research done; right?
A I don't recall that but...
Q Let me hand you what we'll mark as W-31. It's a fax to you from Mr. Heard, isn't it?
A Yes, it is.
Q And what it says is, you're going to stop the prototype work in Louisville; right?
A You're taking -- okay, yes. Go ahead.
Q And then you're going to develop more basic

research on the product in Southampton; right?
A That's what this says, but you're taking things again in piecemeal here. There's a lot more that you're eliminating in terms of the background of this. It says with the tobacco strategy team review, I thought I should summarize the conclusions of the last Friday's discussions on Airbus. The recommendation from the CAC research heads were terminate the prototype in Louisville. Develop the basic research program on nicotine elution, aerosol formation.
Q Let me hand you what we'll mark as W-33. This was a meeting that you were at in February of 1989; right?
A Yes.
Q And it describes some of the technical and practical problems with this kind of product, doesn't it?
A It talks about some of the technical issues associated with research on Airbus.
Q And do you mind, let me -- this is the only copy I have. I'll let you look over my shoulder. Brown & Williamson thought there

was a market for this kind of product; right?
A For a nicotine delivery device with a low biological activity, yes.
Q Let me read you what it says and see if you agree with this. "Brown & Williamson believes that there's a market opportunity for a Premier-type product with traditional tastes and aroma properties."
A That's what it says.
Q "Consumer research concludes the mechanical devices such as Premier are rejected even at the concept stage"; right?
A That's what that says, yes.
Q And this was a mechanical device like Premier; right?
A Yes.

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Q Premier was in deep trouble due to consumer rejection at retail; right?
MR. MOTLEY: It says more than that.
Q It says increasingly negative reaction among regulators; right?
A Yes, because they claimed to be a nicotine device, and they were concerned that the FDA

was going to regulate it.
Q And RJR was going through some restructuring and that's listed; right?
A Yes. I wouldn't have mind having a copy of that and read right along with you. I would like to have a copy, please.
Q It says right here that, "Research on Airbus has not produced a prototype product. He has highlighted a need for basic work on nicotine elution, aerosol generation, heat transfer, flavor development, et, cetera"; right?
A Yes, that was in February of 1989.
Q Exactly. And it says that in view of these and the other factors that are listed it was agreed that the Airbus project be terminated and that the basic research issues at a cost of about a million dollars be transferred to Southampton; right?
A That's correct.
Q And that's exactly what the fax to you from Mr. Heard said in March of 1989; right?
A In March of 1989, that's correct.
Q We're going to stop trying to make a product in Louisville until we can solve some of the

technical problems in Southampton.
A There was needed technical work to be worked on, yes.
Q Now, Mr. Wigand, am I correct that the company -- you had some problems at U.S. Biosonics related to your management style and your approach to the people you worked with; right?
A Is that a question or what? I don't think so.
Q Well, is it?
A No.
Q Why was it you left U.S. Biosonics?
A Because Biosonics fraudulently submitted data to the FDA for approval of a device, and I got in a debate with the chairman over submitting data to the FDA that was incorrect.
Q You've read -- well, you know that's not the way he saw it?
A Everybody has a different perspective, particularly when you're violating law.
MR. OHLEMEYER: That's all I have, Your Honor.
THE COURT: Mr. Wagner, you care to

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inquire?
MR. WAGNER: No questions, Your Honor.
THE COURT: Mr. Furr?
MR. TRINGALI: Your Honor, I have one question.
THE COURT: All right.
MR. TRINGALI: Hopefully one or two questions.
THE COURT: Counselor, identify yourself.
MR. TRINGALI: I'm sorry.
Joseph Tringali representing BAT Industries.

CROSS-EXAMINATION

BY MR. TRINGALI:

Q Mr. Wigand, I think we're going to be done in two minutes.
A Thank you.
Q You visited British American Tobacco Company's offices at Millbank, you mentioned earlier today?
A Millbank, Windsor House, Wilking, I visited lots of places, yes.
Q Just focusing on the Millbank facilities,

that's where British American Tobacco Company had its offices.
A Yes.
Q Okay. You visited Mr. Heard. He had an office there.
A I believe his office was at Windsor House.
Q Did Mr. --
A Which was --
Q Mr. Thornton have an office at Millbank?
A He may -- I think that's probably correct. I'm not sure, though.
Q And Windsor House, sir, that's the offices of BAT Industries?
A That's correct.
Q And do you recall, sir, sitting here today that Mr. Heard had an office at Windsor House as opposed to at Mill Bank?
MR. MOTLEY: I'm sorry, can I hear that question?
Q Sitting here, does Mr. Wigand have a recollection that Mr. Heard's office was physically located at Windsor House, the offices of BAT Industries, as opposed at Mill Bank, the office --
A I believe Alan Heard had three different

offices. I believe he had an office at Millbank, I believe he had an office at Windsor House, and he also had an office in Southampton.
Q Southampton being the British American Tobacco Company laboratory.
A Fundamental Research Center, yes. I think he had a fourth office at ATC, which was the

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biotechnology firm which he ran when he was at Cambridge, so he had four offices.

Q The BAT Industries office, sir, was not at Mill Bank. It was at Windsor House which is on Victoria Street in London?

A I believe that's the address.

MR. TRINGALI: Thank you very much, sir.

THE COURT: Thank you, Counselor. Mr. Motley, have your redirect.

MR. MOTLEY: Yes, Your Honor. May I approach the witness, Your Honor?

THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. MOTLEY:

Q Dr. Wigand, you recognize the signature of Dr. Baker?

A Yes, I do.

Q Is that his signature?

A He never signed his full name. He also signed Richard.

Q Well, what does that say?

A Yes, Richard.

Q You recognize that name?

A Yes, I do, sir.

Q And this Dr. Baker is writing on whose stationery?

A BAT Industries.

Q BAT Industries, not BATCO; correct?

A Yes, sir.

MR. MOTLEY: Move the admission, Your Honor, of Exhibit 104.

MR. OHLEMEYER: I don't have it, Your Honor.

MR. TRINGALI: May I see the document? Your Honor, can we approach? (Bench discussion)

THE COURT: 104.

MR. MOTLEY: They just told us there were two Richard Bakers, by the way.

THE COURT: 104 we will take up later.

MR. OHLEMEYER: Excuse me, can we approach, Your Honor? This might move things along.

THE COURT: All right. (Bench discussion)

THE COURT: Go ahead, Mr. Motley.

BY MR. MOTLEY:

Q Doctor, do you recall being asked questions about your letter to Shook Hardy & Bacon, Mr. Ohlemeyer's law firm?

MR. OHLEMEYER: Excuse me, Your Honor. I don't know that that's a fact in evidence, or it's relevant. I mean, it is a fact, but what's the point of all of that?

THE COURT: Overruled. Go ahead.

Q Is that the letter you wrote to Shook Hardy

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& Bacon?
A Yes, sir.
MR. MOTLEY: I move its admission, Your Honor.
MR. OHLEMEYER: No objection, Your Honor.
THE COURT: It's marked --
MR. MOTLEY: Just whatever the next

number is.
MR. CASSELL: 48.
THE COURT: No objection? Plaintiffs' 48 will be admitted.
(Plaintiffs' Exhibit(s) 48 received in evidence.)
THE COURT: Are you going to have the witness read that, Counselor?
MR. MOTLEY: I am, Your Honor, but I wanted to give it to the jury, if I could.
THE COURT: All right.
Q Dr. Wigand, take a look at this and tell me where in here you asked Shook Hardy & Bacon for a job.
A I didn't.
Q No, look at it now. Look closely. Tell me where in there this says, "Give me a job, Shook Hardy & Bacon."
A It doesn't say that, Mr. Motley.
Q And the letter you wrote your colleague in Germany, is it identical to that one?
A Yes, it is.
Q And the one you wrote to Lorillard, is it identical to that one?
A Yes, it is. It was a networking letter.

Q By the way, did Shook Hardy & Bacon offer you a job?
A No, they did not.
Q You were asked a question, sir, about -- or was read to you about whether or not you were aware of any criminal conduct. Do you recall that? Mr. Ohlemeyer read from the deposition.
A Yes, sir.
Q Are you aware of a grand jury investigation, criminal investigation, sir, with respect to Brown & Williamson?
A Yes, I am.
Q Does that relate to perjured testimony?
MR. OHLEMEYER: Excuse me, Your Honor. I object to that as being argumentative and it lacks foundation.
THE COURT: Sustained as to that.
Q What was the subject -- what was the subject matter of the grand jury investigation of Brown & Williamson of which you are personally aware?
MR. WAGNER: Judge, we want to register a relevance objection to any of this, Your Honor. This has nothing at all

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to do with the issues in this case. It's just a jury argument again by Mr. Motley, all prejudicial, Your Honor.

THE COURT: I'll note your objection, Counselor.

MR. OHLEMEYER: The discussion, also, Your Honor, had to do with fire-safe cigarettes. We're well beyond that at this point.

THE COURT: Go ahead, Mr. Motley.

MR. WAGNER: May I have a continuing objection, Your Honor, to this line of questioning?

THE COURT: I'll show it.

BY MR. MOTLEY:

Q The subject of that, sir, just generally.

A Just making false statements to the government. And --

Q That's good enough. Now, Dr. Wigand, are you a lawyer?

A No, sir.

Q Mr. Ohlemeyer just stated that the Justice Department inquiry; do you recall that? What date was that? CID.

A Oh, January of 1994.

Q And was that in relation to smoking and health or fire-safe?

A It was limited to fire-safe cigarettes.

Q And at the time, did you have any knowledge of any fraudulent or criminal activity of Brown & Williamson, at the time you gave that statement, regarding fire-safe cigarettes?

A When I gave the statement, I believed it was the truth.

Q In January 1994, had you seen some of the documents that we've talked about here today --

A No, sir.

Q -- about smoking and health? Some of the smoking and health documents we've been showing you today, had you seen them in January of 1994?

A No, I hadn't, sir.

Q Do you know -- you don't know the legal definition of fraud, you said. Correct?

A I don't think so.

Q Do you know what dishonesty is?

A Yes, I do.

Q Do you know what deceit is?

A Yes, I do.

MR. MOTLEY: Your Honor, we -- I believe this was marked as 19. We move the admission of W-19 into evidence against Brown & Williamson at this time. This is one that they asked the witness about.

THE COURT: Any objection, Mr. Ohlemeyer?

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MR. OHLEMEYER: No.
THE COURT: All right.
Defendants -- it's actually Defendants' Exhibit W-19 will be admitted.
(Defendants' Exhibit(s) W-19 received in evidence.)
MR. MOTLEY: Your Honor, may I show this to you? Can I have that one?
Q Dr. Wigand, does this show that the legal department was distributing a document called Controversy?
A Yes, sir.
Q Smoking and Health Controversy.
A That's what it says. Habit or Addiction.
Q Well, there's two of them. One of them says Habit or Addiction; the other one says Smoking, the Scientific Controversy;

correct?
A Yes, it does.
Q Dr. Wigand, the entire time you were with Brown & Williamson, 1989 to 1993, did Brown & Williamson ever admit in any public statement that you're aware of that their cigarettes had ever caused disease in a single United States citizen?
A No.
Q They denied it.
A Yes.
Q Now, Mr. --
MR. MOTLEY: Your Honor, we move the admission into evidence of 8947.
Q And I first ask you, sir, if you are shown as a recipient of this document.
A Yes, I am.
Q Did you receive that document?
A I believe I did.
MR. MOTLEY: Your Honor, we move its admission against Brown & Williamson only.
THE COURT: Any objection, Mr. Ohlemeyer?
(Bench discussion)

THE COURT: All right. Over objection, 8947 will be admitted. Ladies and gentlemen, this is admitted only as to Defendant Brown & Williamson and no other defendants.
(Plaintiffs' Exhibit(s) 8947 received in evidence.)
Q Doctor, would you, first of all, tell the jury what CORESTA is?
A I don't know if I can get the French out but it's a --
Q What does it mean in English, sir?
A It's an organization of all the tobacco-producing companies. It's a scientific organization that's based out of France.
Q It's a scientific organization based in

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France?
A Scientific manufacturing organization.
Q Okay. You see the tobacco monograph?
A Yes, I do.
Q "We recommend that Chapters 14 and 15 on smoke chemistry and tobacco and health issues be omitted"?
A Yes, I do.

Q And Mr. Wells is a lawyer?
MR. OHLEMEYER: Excuse me. Read the next sentence.
Q "These areas are changing so rapidly that the two chapters quickly would become dated."
A Yes.
Q All right. Then he says, "As a general observation, it would be advantageous if all documents intended for circulation to CORESTA participants were reviewed in advance by legal counsel."
A Yes.
Q "Candidates for the job would be Bob Northrip of the Kansas City office, or Jim Newsom of the London office of Shook Hardy & Bacon." Right?
A Yes.
Q That's the group that oriented you; right?
A Yes, it is.
Q "Andrew Foyle of Lovell, White & Durrant in London. Both firms currently provide pre-circulation review of documents for industry association" --
Is that consistent with what you

understood was going on?
A Yes, it is. And it's consistent with the policy meeting that was held in New York in 1990.
Q Now, you were asked some questions; do you remember the questions about the short minutes, whether that was just a to-do list? Do you recall that?
A Yes, I do, sir.
Q Things to do?
MR. MOTLEY: Your Honor, I believe this is Exhibit 25973. It's a two and a half page --
Q Is this 25973?
A Yes, it is.
Q The Wells edited, sir?
A Yes, it is, sir.
Q Is that just about things to do, or is it about things you had already done?
A Things that had already been done with significant deletions of key issues and subjects.
Q Well, it says here, "In connection with discussions on several topics, the group decided the items described in this report."

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You had already decided them; right?
A Yes, sir.
MR. MOTLEY: Your Honor, we move the admission of Exhibit 473 against Brown & Williamson only.
MR. OHLEMEYER: Excuse me. May we approach?
THE COURT: Yes.
(Bench discussion)
THE COURT: I think the objection is well taken on 473.
MR. MOTLEY: I'll withdraw it.
THE COURT: All right. It's withdrawn.
MR. MOTLEY: Your Honor, Exhibit 27. 572, I'm sorry.
Q Doctor --
MR. OHLEMEYER: Your Honor, same objection with respect to this.
MR. MOTLEY: Well, this is about the library, Your Honor.
MR. OHLEMEYER: It's dated 1979.
MR. MOTLEY: I'm going to ask him some foundation questions, Your Honor, if I might ask him to look at this.

THE COURT: He can look at this.
Q This was ten years before you got there. Talking about the last paragraph, read it to yourself. Don't read it out loud.
MR. MOTLEY: Your Honor, did I give you a copy of this?
THE COURT: I have it.
MR. MOTLEY: I'm focusing on the last paragraph of the first page.
Q Have you read it?
A Yes, I have.
Q Okay. When you arrived in 1989, from 18 --
A Feels like it.
Q Were the substance of what is described -- don't say what it is -- was the substance of what is described in this 1979 memo about access to the research and development documents, was that true during your tenure also?
MR. OHLEMEYER: Objection, Your Honor. Lack of foundation, calls for an opinion from this witness about matters that he has no personal knowledge of.
THE COURT: Well, why don't you rephrase that, Counselor. You're actually

asking him what is in the document. The document is not in evidence.
MR. MOTLEY: I understand that, Your Honor, I'm sorry.
Q You've read this statement, correct, about access to R&D; right?
A Yes, sir.
Q All right. My question to you, sir, is:

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When you were there, in 1989 to 1993, would the substance of this particular paragraph, this, have been true in your personal experience from 1989 to 1993?

MR. OHLEMEYER: Objection, Your Honor. Lack of foundation and again calls for an opinion from this witness about events that occurred before he was at the company.

THE COURT: No. He can answer that.

A It's very similar, Mr. Motley.

THE COURT: Speak up, now.

A It's very similar, Mr. Motley, particularly after 1990.

MR. MOTLEY: Your Honor, we move the admission of whatever number that is.

THE COURT: 572. Any objection, Mr. Ohlemeyer?

MR. OHLEMEYER: Same objections, Your Honor, as stated to the previous document.

MR. WAGNER: Can we have a relevancy objection, also, Your Honor?

THE COURT: I'll show your relevancy objection. Those objections are overruled. 572 will be admitted.

(Plaintiffs' Exhibit(s) 572 received in evidence.)

MR. SHOCKLEY: Who is that offered against?

MR. MOTLEY: Brown & Williamson only.

THE COURT: As to Brown & Williamson only, ladies and gentlemen.

MR. MOTLEY: It has a different number on it. Will you fix this? It will be 572.

Q Addressing your attention to the last paragraph of that first page, sir.

A Yes.

Q First of all, did you -- this is, again,

Kendrick Wells that you knew. Did you know Dr. Esterle?

A I knew him for a short time when I came to the company. He retired shortly after getting there.

Q He was at BATCO?

A Dr. Esterle?

Q Yes.

A No. He was at B&W research and development.

Q Okay. "Continued Law Department control is essential for the best argument for privilege. At the same time, control should be exercised with flexibility to allow access of the R & D staff to the documents. The general policy should be clearly stated that access to the documents and storage of the documents is under control of the Law

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Department and access is granted only upon approval of request. A secured storage area of the documents should be arranged, perhaps in the R & D library, and the policy statement would designate the same terms and conditions of storage for the documents as were spelled out for the literature retrieval service files.

"When you look at the documents upon receiving them, you could divide them into categories. One category (sensitive) would be passed along to Dr. Sanford with directions that each individual access would be with the prior approval of the law department. Another category of documents might be established under which you would approve access in advance either by certain persons or for certain projects. Advanced access should probably be limited to certain persons. There might be a third group with still broader prior approval for access.

"The abstracts of the documents should be circulated only for the less sensitive categories and then only to a list given prior approval by the Law Department.

"The policy should explicitly make Dr. Sanford the agent of the Law Department with regard to these procedures."

Now, my question to you, sir, is from 1989 to 1993, was the law department intimately involved with research and development matters including research papers?

A Yes.

Q All right. And the first paragraph of that document, on the first page, if you look at the first page again, "I talked with Dr. Esterle about the present circulation of the Southampton material."

That would be R & D matters from BATCO; right?

A That would be from the FRC center, yes, Fundamental Research Center.

Q All right. It says, "Three copies of each written report comes to B&W; two go to Dr. Sanford and one goes to Dr. Hughes. Dr. Hughes retains his copy in his personal files. Dr. Sanford sends both copies to the R & D library where all professionals have access. A copy of an abstract of each report is circulated to division heads in R & D. If the report concerns the manufacturing process, R & D sends a copy to manufacturing, which is expected to be returned to the library. Jim Rosene has kept his eyes out for potentially sensitive material and has simply held them in his office. For example, the Janus material was

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never entered into the library."
Now, sir, do you have personal knowledge as to whether or not certain research data was never entered into the R & D library during your watch?
A Yes.
Q And the answer is?
A There are numerous subjects that were not entered into the R & D library.
Q Do you know what Janus was about?
MR. OHLEMEYER: Objection, Your Honor. Lack of foundation.
THE COURT: Generally you can tell us, if you know.
A Janus dealt with smoking and health issues.
Q Now, Doctor, you were asked a lot of questions about a prior deposition. Were you deposed by -- were you deposed by Brown & Williamson lawyers?
A Yes, I was.
Q How many days?
MR. OHLEMEYER: Objection, Your Honor. Relevance.
MR. MOTLEY: Your Honor, I think it's very relevant.

THE COURT: You can answer that.
Q How many days?
A 11 1/2.
Q 11 1/2 days, over 4,000 pages.
A Yes, sir.
Q And is the lawyer who questioned you in the courtroom?
MR. OHLEMEYER: Objection, Your Honor, relevance.
A At least two of them are.
THE COURT: You can answer.
A At lease two of them are.
Q And who are they?
A Mr. Bruce Sheffler, Mr. Jim --
Q Is he sitting next to Mr. Ohlemeyer?
A Yes, he is.
Q Who is the other one?
A Mr. Jim Milliman.
Q Is he in the back?
A Well -- yes.
Q 11 1/2 days.
A Yes, sir.
Q I want to ask you about -- you were asked questions about your evaluations. Do you recall that?

A Yes, I do.
Q You recall, sir, that you were evaluated as making a solid contribution to the corporation?
A Every year.
Q And a solid plus. When they said that your people skills weren't all that good, but you got a solid plus. Do you see that?

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A Yes, I do.
Q Does that say solid plus?
A Yes, it does.
Q And does it say, "I think Jeff's and R & D's results were nearly" what? What's that word? Nearly what?
A Excellent.
Q Excellent. Now, you were asked a question about what a reasonable and a responsible company would do. Do you remember that?
A That was yesterday, yes.
Q No, no. Mr. Ohlemeyer.
MR. WAGNER: Objection, Your Honor, leading and suggestive.
THE COURT: As to who asked the question, no. Overruled.
Q Remember Mr. Ohlemeyer asked you if that was

something a reasonable and responsible company would do?
A In the con -- you have to put it in a context. I'm --
Q Okay. Well, let me just ask you this way: Setting aside the fire-safe cigarette issue.
A Yes.
Q Okay? You were asked a question whether they had conducted themselves fraudulently, they, Brown & Williamson, in regard to fire-safe cigarettes. You said they had; right?
A That is correct.
Q All right. I'm going to ask you the same question, but I'm going to take the word "fraudulent" out, since you're not a lawyer, and I'm going to use the word "deceptive". And I'm not asking about fire-safe cigarettes now; I'm talking about smoking and health, okay? Not fire-safe. All right? You understand my question?
A Yes, I do.
Q I'm asking you, sir, if you're aware, not of fraudulent, not about fire-safe, but about deceptive practices of Brown & Williamson

while you were there in regard to smoking and health issues?
MR. WAGNER: Objection, Your Honor, to the characterizations of Mr. Motley about these matters. Leading and suggestive, asking the witness to opine about matters that are jury issues in this case, Your Honor. It's not for this witness to testify as to these things.
THE COURT: Overruled. It was brought up on cross.
Q Sir, to your personal knowledge, did Brown & Williamson senior officials conduct themselves in a deceptive manner with respect to smoking and health issues?
A Yes.
Q Before you started with Brown & Williamson,

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sir, did you know what chemicals were added to cigarettes? Did you know every one of the additives?
A No, I didn't.
Q You didn't.
MR. WAGNER: Your Honor, this is clearly outside the scope of proper redirect.

MR. MOTLEY: He was asked about additives, Your Honor. He was asked about coumarin, he was asked about several additives, he was asked about HHS and all of that.
MR. WAGNER: He's entitled to go into the specific subjects Mr. Ohlemeyer went into during his cross-examination, not the whole area of additives again, Your Honor.
THE COURT: Where are you going with this?
MR. MOTLEY: I got one question for him on this.
THE COURT: We'll hear one.
Q Were you aware of all the -- you're a biochemist; right?
A Yes, I am.
Q And you've been a biochemist Ph.D. level 6 what year?
A I got my degree officially in 1973.
Q So you had been a biochemist for 16 years before you joined Brown & Williamson?
A More than 16 years.
Q Whatever.

A Yes.
Q However long it was. And you don't know what the additives were in cigarettes?
A I didn't know all the additives that were in cigarettes, no.
Q And did you know everything that a cigarette would do to human beings?
MR. WAGNER: Judge, this is clearly outside the scope of proper redirect.
THE COURT: Sustained.
Q You were asked questions about how Brown & Williamson had reduced tar and nicotine levels; you recall that?
A Yes.
MR. MOTLEY: Your Honor, I would like to show him the Federal Trade Commission 1995 tar and nicotine levels of a Brown & Williamson cigarette.
THE COURT: You can show it to him.
Q This is the top 12 cigarettes in tar content in the United States. Do you see any Brown & Williamson brand on there?
A Yes.
Q Which one?
A GPC Approved and Raleigh Extra.

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Q GPC and Raleigh Extra were in the top 12, right, in tar? Right?
A That's what this list suggests, yes.
MR. MOTLEY: No further questions, Your Honor.
THE COURT: Recross?

RECROSS-EXAMINATION
BY MR. OHLEMEYER:
Q Mr. Wigand, Brown & Williamson and other companies sell a variety of cigarettes that deliver different ranges of tar and nicotine; right?
A Yes.
Q And, in fact, the average cigarette today delivers about a fourth of the tar and the nicotine it did 25 years ago, doesn't it?
A I don't deal in averages.
Q Do you know whether that's a fact?
A No, I don't.
Q So am I correct that this deposition Mr. Motley keeps asking you about, you had a lawyer at that deposition; right?
A I don't know what deposition you're talking about.
Q Well, the one Mr. Motley says took 12 days.

MR. MOTLEY: 11 1/2.
Q 11 1/2. You were there; right?
A Yes, I was, yes.
Q You had a lawyer there?
A I had two lawyers there.
Q Who paid for your lawyers?
A CBS paid for it.
Q And, in fact, there came a point during the deposition where the judge said that the reason things were going so slow was because you would keep asking questions back instead of answering them; isn't that right?
A I believe there was one day I asked questions back, yes.
Q And, in fact, the judge said that he would allow Brown & Williamson --
MR. MOTLEY: Excuse me, Your Honor. Excuse me, sir. He can't be quoting the judge in a deposition. I mean, I would love to be a judge in a deposition, Your Honor.
THE COURT: You may be asking the wrong person.
MR. OHLEMEYER: I think if we're going to hear how long the deposition took, the jury ought to be able to hear this.

THE COURT: It's a fair area to go into.
Q You recall the judge saying that he would recommend Brown & Williamson be given another week or whatever it takes to get you to answer those questions?
A I vaguely remember that, yes.
Q Now, briefly, Mr. Wigand, on these Vancouver

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minutes, the final minutes, the short version represented the agreements made at the meeting for projects to be undertaken; isn't that right?
A Broadly, yes.
Q So the answer to the question is yes.
A But there were key elements of discussion that were eliminated from the final minutes, like Y-1.
Q The answer to the question -- the question is, did the final minutes represent the agreements made at the meeting for the projects to be undertaken?
A In a very, very summarized form, not produce any exposure in any discovery in any product liability case.
Q With all due respect, sir, I think I'm

entitled to an answer to the question. Did the final minutes represent the agreements made at the Vancouver meeting for projects to be undertaken?
A In the broadest sense, yes.
Q Well, when you answered that question at your deposition you just said uh-huh. You didn't say anything about in the broadest sense, did you? Isn't that right?
A I'm saying it now.
Q Now, Mr. Motley gave you Exhibit 8947. You remember that?
A Well, if you tell me what the context is, I probably can respond.
Q It was a memo from Mr. Wells to a Mr. Black; right? Right? You remember is that --
A If that's --
Q You were at CORESTA the meetings?
A If that's the correct number, yes.
Q And Mr. Wells says about a Vettorazzi paper on EBDC. Do you remember what that was?
A Yes, that was relative to a pesticide that caused cancer.
Q That if the paper was going to be published, that he thinks that there should be

acknowledgment that a tobacco company had provided funds for the researcher to do the research.
A That's correct.
Q Now, with respect to these documents in the library, you got the documents from Southampton; right? You got the reports.
A The final reports.
Q And you could call Mr. Baker over there and talk about anything you wanted to with him or Mr. Heard; right?
A If I thought it was fruitful, I could, yes.
Q And you could do that without asking a lawyer whether you could do it.
A I didn't think I needed to ask the lawyer.
Q Exactly. Lawyers didn't monitor your conversations with Mr. Heard or Mr. Baker

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about research that was going on at Southampton, did they?
A I'm not sure, but I don't think so.
Q Well, they didn't, did they?
A I don't know.
Q And any scientist at Brown & Williamson could do the same thing, couldn't they?
A Do what?

Q They could either go to the library and look at a research report or they could pick up the phone and call Mr. Heard or Mr. Baker at Southampton.
A I think after 1990, that was very restricted.
Q Well, the fact of the matter is, you never went to the library to ask the librarian for any research that was conducted and put in the library before you got there, did you?
A I asked the people that had worked for me to get me various information.
Q Isn't it --
A I went to the library from time to time, yes.
Q Isn't it true that you never asked the librarians or anyone in the library to give you any research documents that predated the time you got to Brown & Williamson?
A I asked for documents relating to nicotine research and I asked for Project Hippo; I was told it did not exist.
Q Mr. Wigand, you know that both the librarians at Brown & Williamson have signed affidavits?

MR. MOTLEY: Excuse me, Your Honor, this is not proper -- to now start quoting from an out-of-court affidavit of somebody that works for Brown & Williamson.
THE COURT: Sustained.
Q Is it your testimony, sir, that you asked the librarians at Brown & Williamson for any research documents that predated 1987 while you were employed at Brown & Williamson?
A I asked either my number two people, either Lance Reynolds or Tilford Reel, or other people to get me things. I didn't have to go to the libraries myself.
Q And you never went to the library, did you?
A I went to the library numerous times.
Q And you never asked anyone in the library for a document or a research report that predated 1987, did you?
A I may not have asked the librarian specifically, but I asked other people.
Q By the way, tell us who Lance Reynolds is?
A He's the retired director of research for Brown & Williamson.
Q And he wrote that document that Mr. Motley asked you about earlier, didn't he?

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A I don't know what you're talking about.
Q This is W-19. Isn't it?
A That's what it says on the bottom, yes.
Q And look at the back page and tell us who wrote that.
A It says MLR, LLP on the back. It doesn't have a signature.
Q That's Lance Reynolds, isn't it?
A I believe that's Lance Reynolds' initials.
Q And Mr. Reynolds, what do you think about Mr. Reynolds' capabilities as a research director?
A He was a capable researcher, yes.

MR. OHLEMEYER: That's all I have, Your Honor. Thank you.

THE COURT: Mr. Wagner, any questions?

MR. WAGNER: None, Your Honor.

THE COURT: Mr. Tringali, anything else?

MR. TRINGALI: No, Your Honor.

MR. MOTLEY: Judge, can I ask one question.

THE COURT: Omitted or?

MR. MOTLEY: Well, in response to

this deposition business.

THE COURT: You had redirect, Counselor. If this is an omitted question.

MR. MOTLEY: No. No, sir, I can't say that it is. I'll sit down.

THE COURT: Thank you, sir. You may step down. Thank you.

MR. MOTLEY: Your Honor, before we do the next matter, I have a motion for the Court that I need to address outside the presence of the jury.

THE COURT: All right. We'll deal with that.

Mr. Ohlemeyer, let me inquire, is your witness here?

MR. MOTLEY: That's what I'm talking about, Judge.

MR. OHLEMEYER: Yes, he is.

THE COURT: All right. Is he ready to go?

MR. OHLEMEYER: Yes.

THE COURT: We need to make a motion before he --

MR. MOTLEY: That's what I'm talking about.

THE COURT: All right. Sounds like we need about ten minutes, ladies and gentlemen. We'll take a ten-minute break. Go outside, if you like.

(Standard admonition)

MR. CASSELL: All rise.

(Jury not present)

THE COURT: Jury is not present.

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We're still on the record.
What's the motion, Mr. Motley?
MR. MOTLEY: Your Honor, I don't know if the witness is in here or not, but if he is, I'd ask him to be --
MR. OHLEMEYER: He's not.
MR. MOTLEY: Your Honor, the witness spoke with Mr. John Young last night. You know John Young is of counsel. And I asked Mr. Young to come in here. I don't know where he got off to, and I don't want to misstate what he was told.
We object in light of what he told Mr. John Young, calling this man in the middle of our case, or while our case is going on. He told Mr. Young that he was available Monday till noon, had to be in a

class Tuesday, could come back after that. We're not going to get through till Tuesday. If he can come back, and then I think we ought not interrupt our case to put him up out of turn.
Did I state correctly what he said, John?
MR. JOHN YOUNG: Yes.
MR. MOTLEY: I don't think it's fair, and I'm glad to pay the man's air fares, but I don't want somebody coming in in the middle of my case. And he didn't seem disinclined to come back, did he, John?
MR. JOHN YOUNG: What I asked him, Your Honor, was what was your schedule for next week? He told me he has a class that he is teaching that people are coming to from different parts of the state, that he felt it was very important to be there. I asked him did he have any other obligations any other part of the week and he said no.
MR. OHLEMEYER: Your Honor, we talked about this almost a week ago, at a point when the plaintiffs were telling us they were going to rest their case on

Friday. This man told us, we couldn't compel his attendance, he would drive down here. He needed two days to get here, two days to get home. He had a class next Tuesday, Wednesday, that he needed two days on each side of. And so we asked Your Honor if we could have him come in on Friday, to make sure we got him to testify, even if they hadn't finished Friday, on the theory that if they had rested Friday and we started our case, there was a chance we would get done before he could go on. We haven't misled anybody. He won't fly, and he's here, and he came here to testify.
MR. MOTLEY: Well, Judge, if the man's representations, as I recall it -- I'm not representing my recollection is infallible in this regard, but my understanding was that the only time he

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could come was in our case, that he could only come on Friday. That's not so. It's very unusual, I respectfully suggest, to put a witness up in my case.

THE COURT: It is, but not unheard of.

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MR. MOTLEY: Judge, I'm not saying it's unheard of. But if the man doesn't mind coming back, and, in fact, he can come back, then why do the extraordinary interrupting my case to put on one of his crucial witnesses in my case?

MR. OHLEMEYER: I can assure you he minds driving back to Bemidji, Minnesota, and turning around a week or ten days from now and driving back. This all started a week ago when we thought the plaintiffs were going to rest, Mr. Patrick was telling me a week ago I needed witnesses Friday. I asked the Court, because of this situation, if I have to have this man drive down here, I need some representation or some help in making sure we can get him on. Because I couldn't guarantee that he would come back next week because of his seminar.

I mean, Your Honor, I really, I understand Mr. Motley's position, but I don't understand why we're hearing about it at 20 to 2:00, this conversation that allegedly occurred last night. I think this is a patent attempt to disrupt things and

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to --

THE COURT: No, no, and I don't think he misled. I don't think anyone misled the Court here. I'll tell you what. Why don't I suggest we bring the witness in and ask him his schedule for next week. I'll tell you, it is an extraordinary thing that I agreed to do. I did it on the basis that the witness would not be available, and I didn't have any problem doing that. If the witness is available to come back, I'm inclined to agree with Mr. Motley here. But I do not like to insert witnesses, but let's see what he says. Bring him in.

MR. MOTLEY: Would you ask the questions, Your Honor?

THE COURT: I will indeed.

MR. WAGNER: Judge, just one thing to keep in mind. It's a two-day drive.

THE COURT: I know.

MR. WAGNER: He may not want to do this again.

THE COURT: I understand. I'll ask a few general questions, and then counsel will have an opportunity to inquire.

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Mr. Ohlemeyer, when is your best guess he would be called if he was called next week?

MR. OHLEMEYER: Well, I'm under the

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impression he's got a seminar to teach on Tuesday.

THE COURT: No, no, the day. I mean, while I'm talking to him, I'm going to ask him.

MR. OHLEMEYER: Well, next week I can't get to him, because I've got other witnesses. We're so screwed up on this schedule, Your Honor, quite frankly, because of everybody's schedules that I've, you know, got all kind of problems right now.

THE COURT: So you don't know when you would call him in your case?

MR. OHLEMEYER: No.

MR. SHOCKLEY: They don't even have a witness waiting.

MR. OHLEMEYER: It's not like you have a witness.

THE COURT: When do you think you're going to rest?

MR. MOTLEY: Tuesday.

THE COURT: Tuesday evening?

MR. MOTLEY: Yes, sir.

THE COURT: With that in mind, your case starts Wednesday. When would you call the witness?

MR. OHLEMEYER: I couldn't call him next week, Your Honor. I have witnesses that have to go on next week.

MR. MOTLEY: Maybe the following week. We'll find out.

THE COURT: When would you call him then, the following week, Tuesday, Monday?

MR. OHLEMEYER: Depends on how long things go. Sometime the following week, but bear in mind, I have -- is it that funny, Mr. Cross?

MR. CROSS: I didn't hear what you said.

MR. OHLEMEYER: I can't force this man to drive back here again.

MR. MOTLEY: You know, if all that is true, Your Honor, we can find out soon enough, won't we? You'll ask him and see.

THE COURT: Where is he?

MR. MOTLEY: I mean, obviously it's

inconvenient, but it's extraordinary, as you just pointed out, to interrupt my case to do that.

MR. OHLEMEYER: Your Honor, I'm really disappointed about this. If this was a problem, I think we would have heard about it before a quarter to three.

THE COURT: I agree.

MR. MOTLEY: Judge, I had no information about this until we broke for lunch and I met with Mr. John Young. He came up to me and told me that he had a conversation with him.

THE COURT: I understand. Mr. Crisman here?

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MR. MOTLEY: He's not going to get off the stand today anyway.
MR. OHLEMEYER: I don't know why he wouldn't, Your Honor. He's got about a 45-minute direct. I can't imagine --
MR. MOTLEY: Gee, you all go three times longer than me, so three times 45, that means I ought to have two and a half hours. I'm teasing, Judge. I don't have a long time, but I don't think he's going to

get off the stand anyway.
MR. OHLEMEYER: It would be my hope we would get him on and off today. That's the whole point of doing this. The hour direct this morning turned into about an hour and a half.
MR. WAGNER: Of course, we're now eating up some more of the time.
THE COURT: I know we are.
MR. MOTLEY: Judge, we didn't know there were going to be 75 objections per witness.
MR. OHLEMEYER: The last time I looked, Your Honor, I was allowed to make objections.
MR. TITTLE: Mr. Crisman, Your Honor.
THE COURT: Good afternoon. Would you have a seat over there please. I need to ask you some questions. I'm going to ask you some questions and then the attorneys may need to inquire.
Would you raise your right hand.

JON CRISMAN,

having been first duly sworn to tell the truth,

the whole truth, and nothing but the truth, testified as follows:
THE COURT: Would you tell us your name, sir.
THE WITNESS: Jon Crisman.

VOIR DIRE EXAMINATION BY THE COURT:

Q You have been notified in some manner that you may be a witness in this case?
A That's correct.
Q All right. And I realize -- where do you live, sir?
A [DELETED].
Q How did you get down here today?
A I drove.
Q And you left?
A Wednesday morning.
Q How far is it?
A 880 miles.
Q There has been some mention that -- as you may or may not be aware, there was a request made yesterday that you testify today out of order; you understand what I'm saying?
A Yes, sir.
Q All right. There has been mention that you perhaps could be available at another time,

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the end of next week or even the following week.
A Not the following week, sir.
Q The following week you would not be available?
A My wife is a professor, and I have two little children, age three and four, and so she has to teach from the 11th of March on.
THE COURT: May I have a calendar?
MR. OHLEMEYER: 11th is Tuesday, Your Honor, a week from next Tuesday.
THE COURT: Week from this coming Tuesday?
MR. OHLEMEYER: Yes.
BY THE COURT:
Q You would not be available that week?
A That's correct.
THE COURT: All right. Care to inquire, Mr. Ohlemeyer?
MR. OHLEMEYER: No, I don't, your Honor. All I point out is the request was made, I think, a week ago to put the witness on.
THE COURT: I understand. When were you first advised, sir, to be down

here?
THE WITNESS: About a week ago.
MR. MOTLEY: Can I ask one or two questions.
THE COURT: Mr. Motley.
VOIR DIRE EXAMINATION BY MR. MOTLEY:
Q Hi, sir. My name is Mr. Motley. Are you here under subpoena of any kind?
A No, sir.
Q So you voluntarily came?
A I was asked to come.
Q But nobody said you had to come?
A No, sir.
Q And while I know it's an inconvenience to be driving, you are available next week if the Court decides you should testify next week instead of today?
A I could leave Wednesday morning of next week and be here for a late Thursday or early Friday, yes.
Q Okay. And then if you had to, if we weren't able to get to you Friday or didn't get finished, you got to be back in Minnesota on Tuesday?
A On Monday.

Q On Monday night?
A Yes.
Q Okay. And you don't fly?
A No, sir.
Q Don't blame you for that. Okay. Thank you, sir. It's about a 16-hour drive?
A About 16, yes.
THE COURT: Anything else, Mr. Ohlemeyer?
MR. OHLEMEYER: No, Your Honor.
THE COURT: Sir, you may step down

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and out into the hall, and we will call you back when we need you. Thank you.

MR. OHLEMEYER: Your Honor, I have two witnesses next Friday who can only testify next Friday.

THE COURT: He will be permitted to testify today.

MR. OHLEMEYER: Thank you.

(A brief recess was taken.)

MR. CASSELL: All rise.

THE COURT: Be seated.

MR. MOTLEY: Your Honor, are you going to explain?

THE COURT: I will.

MR. OHLEMEYER: May we approach for a moment?

THE COURT: Sure.

(Bench discussion)

THE COURT: We're back on the record. Jury present in its entirety, together with three alternates.

I want to explain something to you, ladies and gentlemen. There was a thought at one time in the matter that plaintiffs would be resting, perhaps, today or perhaps Monday. It appears as though the plaintiffs will rest their case Tuesday evening. Since that was the earlier thought, a witness came in for the defense from Minnesota, drove in. While you were out, I talked to the witness on the stand here and determined that it would be inconvenient and perhaps not possible for the witness to come back at a later time. And bearing in mind the witness does not fly and had to drive in, so I have granted Mr. Ohlemeyer's request to take this witness out of order.

And I want you to understand that this is a defense witness and not a plaintiffs'

witness. So what we are doing right now, we're going to stop the plaintiffs' case, I'm going to let this witness testify, and then Monday we'll take back off with the plaintiffs' case. So this is a defense witness and should be considered as such. So I just wanted to explain that.

I might say another thing, here, in terms of our schedule. The defense will have any right -- as I say, they will start their case next Wednesday, Wednesday morning. And they will have witnesses they tell me that could last five, six days, somewhere around there. So I tell you that for purposes of your own schedule. So after the evidence is completed, then what happens is that I work with the lawyers on instructions. We'll either do that one day or we'll do that in an evening or several evenings, or a couple evenings. After that, then the case, the attorneys will have an opportunity to make their final arguments to

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you. I'll read the final instruction and then the case will be given to you to make a decision upon.

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So I wish I could be a little more clear on how long we think it's going to last, but I told you about all I know at this point. Actually we're making good progress. The case is going -- the case is pretty much where we all thought it would be at this stage, so we're all pleased with the progress of the case. And really, we haven't had too many witness problems considering the fact that people have to come from a long way in this case. I think we've been able to keep things moving for you hopefully.

But, again, this witness is called on behalf of the defendants and not the plaintiffs.

Mr. Ohlemeyer, call your witness.

MR. OHLEMEYER: Your Honor, the defendants call Jon Crisman.

THE COURT: Raise your right hand, sir.

DEFENDANTS' WITNESS, JON CRISMAN, SWORN

THE COURT: Would you have a seat, please. State your name.

THE WITNESS: Jon Crisman.

CRISMAN-DIRECT

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THE COURT: Spell your last name.

THE WITNESS: C-R-I-S-M-A-N. My first is J-O-N.

THE COURT: J-O-N. Thank you.

MR. OHLEMEYER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. OHLEMEYER:

Q Mr. Crisman, where do you live?

A In [DELETED].

Q What do you do there?

A I'm retired.

Q When did you retire?

A In August of 1996.

Q And from where did you retire?

A From the Veteran's Hospital in Marion.

Q We've heard a little bit about the Veteran's Hospital and the Veteran's Administration. Will you tell us what a Veteran's Hospital is.

A Well, Veteran's Hospital is a part of a system of hospitals that are funded by the federal government to care for the needs of those veterans who have served our nation in times of war and piece.

CRISMAN-DIRECT

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Q How extensive is that system? How many hospitals are there?

A Well, at one time there was 171. They've merged some of them, so I believe now there's 152, plus a series of outpatient

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clinics.
Q How long have you been, or how long had you been associated with the Veteran's Administration before you retired?
A 26 years.
Q And what was your position at the time you retired?
A I was the hospital director.
Q For the Marion VA.
A For the Marion and Fort Wayne VAs.
Q Can you tell us a little bit about your education and your employment that led up to your position at the Marion VA.
A I received a Bachelor of Science Degree in Medical Technology in 1962. I was employed for one year with the VA as a medical technician. Then I entered the Air Force for eight years. Following the military, I received a master's in microbiology in 1967. And then I left the service and rejoined the

VA as an administrative assistant in the laboratory service. Completed a Master's of Public Administration while working at the VA. That was granted in 1976.
Q What is public administration?
A It's a form of business administration, having to do with the operations of government.
Q And would you explain for us the jobs you held at the VA in terms of what you did over the years leading up to your position at Marion.
A I started as a med tech, in the laboratories, then as a laboratory manager. I then moved to the front office as an administrative assistant to the chief of staff. I later entered training as an associate director and became an associate medical center director and was associate director of several large VA hospitals before being appointed as a director of a VA Hospital.
Q And what is the director? What does the director do?
A The director is the chief executive officer

of the entire hospital who is responsible for all the operations at the hospital, both administrative and clinically.
Q And when did you first become a director in the VA system?
A In 1984.
Q And where was that?
A In Toma, Wisconsin.
Q And then when did you come to Marion?
A In 1987.
Q Would you describe the facility at Marion on or about the time you started working there.
A Well, it was a long-term geropsychiatric facility, what was termed geropsychiatric,

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elderly long-term care patients, as well as acute psychiatric patients. It had a small 40-bed acute medicine bed section, and a large clinic. There were about 400 patients, inpatients, being cared for there and about 50,000 outpatients a year.

Q Physically how many buildings and over how much acreage, I guess, size was it?

A About 150 acres and about 50 buildings, but the buildings that had patient wards in them amounted to about 16, I believe.

Q Sixteen different buildings?

A Yes.

Q And within those buildings were there different floors?

A Yes.

Q Were distinctions made among the buildings and among the floors?

A Well, each -- each building consisted of one or more patient care wards, and different types of patients were cared for in different buildings.

Q Is each floor a separate ward?

A Not necessarily. Commonly, all of the patients in one ward would be under, or in one building would be under one ward.

Q When you got to Marion, how would you describe the physical condition of the buildings and the physical facilities?

A Well cared for facility. Excellent condition.

Q What about the equipment and the condition of the medical equipment; did they have the appropriate equipment; was it in the appropriate condition?

A Yes, they did. For that type of hospital,

they had been well managed for many years.

Q How would you compare the physical condition of the physical facilities in Marion with other Veteran's Administration hospitals with which you had been familiar?

A I had seen VA hospitals that were not as well managed over the years, but most VA hospitals were about the same as at Marion.

Q What is it that determines how well managed or operated a hospital is?

A Well, at least partly the skills of the managers, but as well the willingness of the federal government to give that hospital a sufficient budget to manage properly.

Q Would you compare or describe for us the types of doctors and types of nurses and types of staff people that were at Marion when you arrived there.

A Well, there were probably 25 physicians, doctors. There were about 300, 350 nursing staff, of which about 125 were registered nurses. They were the typical physicians and nurses that you would find in any

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hospital with the same training, same background, same skills.

Q And by that, do they have to take the same types of courses and have the same types of degrees, get the same types of licenses?

A Absolutely. The nurse and doctor that work at VA Hospital are exactly the same type of nurse or doctor that would work at a private hospital. In fact, they go back and forth quite often.

Q And what do you mean by go back and forth?

A Well, they are hired at the VA, work there for several years, and then move on to either another city or choose to quit at the VA and go work at a private hospital, and so that the staffs rotate between the hospitals quite freely.

Q How would the facilities and the equipment at the VA Hospital in Marion compare to the facilities and equipment at a privately run hospital?

A Well, the Marion hospital was a geropsychiatric hospital, and there are very few private geropsychiatric hospitals. But in the medical sections, or in the clinics, where the patients were receiving general medical treatment, it was comparable to that

of any other private hospital.

Q And how would you compare the staffing and the chain of command, as it were, at the Marion VA to other types of hospitals?

A Well, it would be similar. The way you run a hospital doesn't change just because it's run by the government.

Q As director, were you responsible for reviewing and supervising the hiring and recruiting of staff?

A Yes.

Q And from where would you recruit doctors and nurses at the Marion VA?

A Typically from the local community.

Q And during the time you were at Marion, how competitive or tight was the market for doctors and nurses?

A Very. Marion was always struggling to fill our vacancies for both doctors and nurses.

Q And why was that?

A Usually our salaries were a little bit less than at the private hospitals. Every time our salaries went up, they raised their salaries a little bit more.

Q And there's been some talk about the

benefits at the VA. How did you compare with the other hospitals in terms of benefits?

A Ordinarily our benefits were quite a bit better.

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Q In terms of planning and directing the operation of that hospital, did you have to become familiar, to a certain extent, with past practices and past situations in terms of hiring and recruiting?
A Absolutely.
Q And how did your experience, when you got there, compare to what you learned about what went on in the past with respect to hiring and recruiting nurses?
A It was typical with what I had experienced at other VA hospitals and was exactly what I expected.
Q And explain for us what you mean by that.
A Oh, we were not having any greater difficulty or greater success in hiring and retaining an excellent staff that I had experienced in other VA hospitals. And frankly, it was similar to what the private hospitals were experiencing.

Q In your experience with health care and hospitals, are nurses typically a mobile group of employees?
A Yes, largely.
Q And that's my word, not yours. But what do you understand that to mean?
A Nurses, very commonly, especially during those years, the years in the '80s and early '90s, it was very easy for a nurse to move from one job to another. There was always a need for nurses in almost any hospital or clinic. So if a nurse chose to move, he or she could very readily move from one job to another, so they were very highly mobile if they chose to be.
Q And how did that affect the way you ran the hospital or hired and recruited employees?
A Well, we tried to take good care of our doctors and nurses.
Q Why was that?
A If they became dissatisfied with us, they would leave.
Q Now, can you describe for us in a little more detail what your job responsibilities entailed at the VA.

A Well, I set all the policy or worked with committees that would recommend policy. I approved all policies. I distributed the budget. I was responsible for the quality of the care and the quality of all of the operations, the financial operations, the personnel operations. I was responsible for everything that happened at that hospital and it was my -- my job to see that patients were given excellent care, the equipment was in good repair. The environment was well cared for, the employees were well trained in doing their jobs well. This is how I spent all of my days. That was what I put

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my attention on.
Q Did you have certain key staff or personnel people that you worked with on a regular basis?
A There were senior staff, both on the administrative and the clinical sides that I worked with regularly.
Q And what does that mean, senior staff on the clinical?
A Well, there would be a chief nurse, a chief doctor, a chief of medicine, chief of

psychiatry, a chief of long-term care, chief physician in rehabilitative medicine, chief of finance, chief of personnel, chief of engineering.
Q So those people would report to you?
A Directly, yes.
Q With respect to the chief nurse, who would report to the chief nurse?
A Chief nurse had several what were called area coordinators. That was the next level down, and then head nurses reported to the area coordinators.
Q When you got to the VA, did you have to acquaint yourself or orient yourself to the facilities in Marion?
A Certainly.
Q How did you do that?
A Oh, I spent several days touring the facility, meeting with both the key staff and as many other employees as I could. I was given detailed briefings on the entire operation, both the history of the facility and the hope for future of the facility, any of the problems that they were encountering, construction projects that they had funded

and were underway, or were expected to occur in the future. I got a very thorough briefing on the entire operation.
Q On a continuing, on a day-to-day basis, how did you become, or how did you remain familiar with or acquaint yourself with the operation of the hospital?
A Well, I met with the key staff every morning at the beginning of the day for at least 30 minutes. That included the chief nurse, the chief of staff, the chief of medicine, chief of psychiatry, and the chief fiscal officer and the associate medical center director.
Q And was that a policy that you initiated or was it something that was ongoing at that hospital or other places you had worked?
A It was typical of the way VA hospitals were operated. It is what I had experienced in other VAs and continued at the Marion VA.
Q As part of your job as director, did it become necessary for you to become familiar with existing policies and procedures?
A Yes.

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Q And did it become necessary for you to become familiar with past practice and

policy as it relates to those procedures?
A Yes.
Q And are there policies that apply to VA hospitals throughout the country?
A There are policies and procedure manuals that are published by Washington, by the VA center in Washington, that are common to all VA hospitals, yes.
Q How does or how do those policies get communicated and distributed and put into place at an individual hospital?
A Ordinarily they come through me. Then I send them out to the area where they apply. And then the staff are briefed on any changes in policy from central office in Washington. And if necessary, we rewrite local memoranda and policy and procedure manuals to accommodate any changes.
Q So when you say they come through you, you get something from Washington that says this is the VA policy?
A That's correct.
Q And then what happens with it next?
A I would read every word.
Q And then what?

A Then I would send copies out to the places that needed to know of it.
Q Places in the hospital?
A Yes. If it had to do with the way patients were being cared -- were expected to be cared for in certain clinics, I would send it to that clinic or to the chief of staff, and he would distribute it to the doctors and nurses in that clinic. Whoever worked in the area where that policy applied would get a copy.
Q And then would those policies -- how would those policies be communicated to staff about patients as appropriate?
A If it was necessary to discuss it with the staff, there were regularly staff meetings of every group in the hospital, whether it's a group of nurses or a group of clerks, and at that staff meeting they would discuss the policy changes that were needed.
Q And how would those policies be enforced?
A By the supervisory staff.
Q And who would that include?
A That would include everyone from the first line supervisors, such as head nurses or

chief of building maintenance, or the chief clerk in a clinic, all the way up to the department heads.
Q And would that have been the way things worked throughout the time you were with the

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VA system?
A Absolutely.
Q And was that the way things worked when you were at Marion?
A Yes.
Q Let me hand you, sir, what has been previously marked and admitted into evidence as Defendants' Exhibit F1270, 1271, 1272, 1273, 1274, 1275, 1279, 1280, 1283. And these are photocopies, sir, of what?
A These appear to be a number of, at least some circulars from Washington regarding details on smoking policies in VA hospitals. One of them is a hospital memorandum written at the Marion VA regarding smoking policy.
Q What is a circular?
A It's one of the ways central office sends us instructions on how we were to run the hospital.
Q And then with that set of instructions, how

would you carry out those directions?
A Depended on, of course, the content of the circular, but usually we had, as well, policies and procedures that we had published at the hospital. And so we would compare those instructions from Washington with our own policies and procedures and make any changes that were necessary. But sometimes the circulars directed us to create certain clinics or certain committees or something and we would do that.
Q Were you allowed to disregard those policies?
A Absolutely not.
Q Could you relax them?
A No.
Q Could you make them more restrictive in certain circumstances?
A In some cases the circular would give us the authority to make them more restrictive, yes.
Q Do you recall specifically any of those policies being communicated to you while you were involved in the VA system?
A In the VA? Absolutely. I recognize every

one of them.
Q And how is it you recognize them?
A I remember reading them.
Q And are they -- that's the form in which you would have received them?
A Yes.
Q Mr. Crisman, can you tell us what the Joint Commission on, is it Joint Commission on Hospital Accreditation is?
A Yes.
Q What is that?
A That's an organization that inspects hospitals throughout the United States. They have a series of standards, an entire

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book full of standards that they expect you to meet in all areas of hospital administration and in patient care. And about every two or three years they send a team in to inspect your hospital. And if that team finds that you're failing to meet those standards, you're cited for those failures, and if the team believes that you substantially meet those standards you receive what is called accreditation.

Q Who is this group, this Joint Commission?

Joint Commission of what?

A It's a private organization founded by the American Hospital Association, American Medical Association, other associations of doctors and nurses nationally. They founded this as an accrediting organization that would ensure that hospitals throughout the country all meet certain standards in the care of patients.

Q What happens if you don't meet their standards?

A Well, if the VA Hospital where I was director didn't meet the standards and lost accreditation, I would have lost my job.

Q So this is not some kind of voluntary situation, it's an important part of what you do?

A Absolutely.

Q How is it that they go about the process? Can you describe that for us in some detail?

A Well, we receive their book of standards every year, and then they schedule a survey, an audit, and at some point they arrive and usually spend, in a hospital the size of Marion, a week. There would usually be four

or five inspectors, doctors and nurses that are hired by this organization. They would come in and spend a week going through the hospital. They would read patient's charts, they would interview staff, they would go out and talk to patients and families, they would observe care being given on the wards and in the clinics. And essentially spend the entire week inspecting the hospital and all that it does to ensure that we were meeting their standards.

Q Could or did they meet privately with staff and management?

A Absolutely. We were required to post a public notice that they would be on station and anybody who wished to talk to them confidentially, whether that was a staff member or a patient or a patient's family or just somebody from the community, we were required to make arrangements that they get in touch with the surveyors confidentially and could meet privately with them and tell them anything they wanted to tell them.

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Q Was that a regular feature or regular part of what they did?

A Absolutely.
Q And I take it this process was something you were involved with and familiar with both at Marion and at other health care facilities with which you were involved?
A The entire time I worked with the VA, I was involved with that.
Q Do you recall or do you know whether they had a specific standard for a specific rule regarding smoking by patients or staff?
A They did eventually, in 1994 I believe, require that no hospital allow smoking by anybody in the hospital ever. Throughout the entire nation.

Starting about ten years before that, they began discouraging the allowing of smoking in hospitals. And they did have a set of rules -- well, there were two areas of their standards that would apply. One would be just general quality of care rules that could include the presence of smoke in the patient's care environment. And the other was the environment of care section of their standards in which they specified the type of environment that you had to provide

to give care to the patient.
Q What do you mean by that, by environment of care?
A Anything from the appearance of the treatment rooms and lounges and patient bedrooms to sufficient air conditioning or heating or ventilation. Whatever would make up the patient's environment while they were at the hospital being treated. The JCHAO had standards that they required at the hospital.
Q Based on your experience with that organization, would they have -- if they had observed what could be described perhaps as a blue haze of smoke on a ward, would that be something they would have reported?
A That would have absolutely violated their standards. They would have cited a hospital for that immediately. And it could well have led to the loss of accreditation at the hospital.
Q Mr. Crisman, was there a union at the hospital?
A Yes.
Q At the Marion hospital?

A Yes.
Q And whom did the union represent?
A The union represented all of the non-supervisory employees, both the administrative and the clinical, including

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doctors and nurses.
Q And at what point would a nurse become supervisory?
A A head nurse was the lowest level of supervision.
Q What role did the union play in your experience in regulating or supervising working conditions?
A Well, essentially the union's contract had to do with working conditions. They were permitted to negotiate with us on any issue having to do with working conditions of the employees.
Q And what types of things would be negotiated?
A Everything from work shifts, breaks, the length and spacing of breaks, the length of time given for lunch, the way in which the off shifts, the evenings and weekends, were distributed among the employees, the way

overtime was offered to employees, the way vacations were decided, who would get what vacations. They would become involved in promotions. They would oversee to make sure that the promotions were given out equitably. Then any other complaint that the employee had could be brought to the union and they would represent that employee.
Q Was smoking policy something negotiated by the union?
A It was negotiated with the union. Medical Center proposed the smoking policy and the union then reviewed it, and we had a meeting to confer on the details of the smoking policy.
Q And would that negotiation process have to conform with whatever the VA was telling you from Washington?
A Absolutely.
Q Are you familiar with an organization known as OSHA?
A Yes.
Q What's OSHA, O-S-H-A?
A Safety and Health Administration. They are

the people who are involved in ensuring workplace safety.
Q From time to time did they inspect your facilities?
A Yes.
Q For what purpose?
A Any purpose they chose. One time they showed up because somebody had represented that there were cockroaches in the patient's dining room and they, that was represented as an endanger to the patient and staff from bacterial contamination.
Another time OSHA arrived to inspect our provision for safety practices in the

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care of tuberculosis patients, to ensure that we were providing our employees with proper masks and filters and gloves and such to protect the employee from contracting tuberculosis.

Q When you were at Marion, would you tour the facilities or tour the grounds on a regular basis?

A Constantly.

Q How often would you get around to any particular, or any individual building?

A I made it a practice to visit every single clinic and every single patient ward at least twice a month.

Q And during that time, did you become acquainted with a nurse named Mildred Wiley?

A I knew Mildred, yes.

Q And how was it you became acquainted with Mrs. Wiley?

A I met her when I first arrived, of course, as a head nurse. And then whenever I would go through her unit, I would typically check in with the head nurse to make certain they knew I was there. And that's usually the contact that I had with her.

Q And is it your recollection she was in Building 16?

A Yes.

Q How often would you get to Building 16 when you were at Marion?

A At least twice a month.

Q And would you typically see her on each of those visits?

A If she was there, yes.

Q Were there times where you would see her outside of Building 16?

A Possibly.

Q On what occasions would that arise?

A If there were a meeting that she was attending that I would be attending or if she came to my office for something. I think more than once, she came in for some sort of award. Other types of activities where they would gather and I would go meet with staff, if she were there, I would see her, yes.

Q During your tenure at the VA, did it become necessary or customary for you to assemble and collect and then act upon information compiled or transmitted to you by other people with whom you worked?

A Constantly.

Q And from time to time, and specifically in the time period following Mrs. Wiley's death, have you reviewed files or materials from files that had been collected at your direction about the VA in Marion?

A Yes.

Q Describe the type of patients for us that

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were in Building 16.
MR. MOTLEY: Excuse me, Your Honor,

what time?
Q While you were there, Mr. Crisman.
A While I was there. Typically, they were quite elderly. Most of them had psychiatric diagnoses of some sort during their life. Most of them had been at the Veteran's Hospital for many, many years. Most of them had medical conditions, either because of strokes or dementia or Alzheimer's or some other condition which rendered them very debilitated, quite helpless. Many of them were bedfast. Most of them had to be dressed, fed, most of them were incontinent of urine and feces, had to wear diapers. Very difficult patient to care for.
Q Was that a ward, was it considered a difficult place to work?
A Yes.
Q And how long had that ward housed those types of patients?
A I was advised since the ward had been remodeled in 1979.
Q And at the VA in Marion, were the same types of patients typically assigned to the same buildings for long periods of time?

A Yes.
Q Why was that?
A Well, it was easier to maintain the skills of the staff in treating that patient. We had wards for acute psychiatric patients, we had wards for alcohol patients, we had wards for patients who had primary medical conditions with no psychiatric diagnosis. We had wards where the patients were, like in Building 16, almost total care patients. And all sorts of different clusters of patients having different characteristics.
Q You used the phrase "total care" and earlier you said "bedfast." Would you explain those terms for us.
A Total care patient doesn't necessarily have to be bedfast. In fact, if the patient could be gotten up and put in a geriatric type of wheelchair and brought out into the common room, the lounge, it was better for the patient to be around other people. Some patients, though, that couldn't be done. They were either comatose or required so much care that they had to remain in bed all the time.

The patient who could be brought out to the lounge area in a geriatric chair still often required very great amount of care. They couldn't dress themselves, they couldn't feed themselves, they couldn't care

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for themselves much at all. They almost couldn't participate in anything. Many times, they only had a minimal awareness of the people around them.

Q Who would be responsible for doing all of that for those patients?

A The nursing assistants and the nurses.

Q And can you describe for me the distinctions at the VA between nursing assistants and nurses?

A A nurse is a trained registered nurse who has attended nursing school, college. And is a professional. A nursing assistant is an aide. An individual typically trained at the hospital in just those techniques needed to give physical care to the patients. And they work under the -- the nursing assistant works under the direct supervision of a registered nurse.

Q So they have specialized knowledge and they

work with the nurses to provide care for these patients?

A Absolutely.

Q And then who, what type -- I guess my question is, if the nursing assistants work with the nurses, who do the nurses work with? How do the nurses know what to do?

A Well, of course by their professional training, they largely know how to care for the patient. They know what the needs of the patient are. But every patient is seen and cared for by a physician, and the physician writes the initial orders and gives the direction for the type of care, certainly writes the prescriptions for the medications that the patient would require, and gives that -- that direction. But frankly, with these types of patients, the doctors in their intercession with the patient wasn't nearly as great as the nurses.

Q So the nurses spend much more time with the patients?

A Absolutely. You bet.

Q How would the duties of a head nurse compare

to those of a nurse or a nursing assistant?

A The head nurse was in charge of the ward. The head nurse scheduled all the rest of the staff, determined what nurses would work nights, weekends, identified when the nursing assistants would work nights, weekends. She determined what jobs people would have and supervised that care. She made certain everybody was trained to do what they were supposed to do. She gave direct supervision. She often, as well, gave direct care to patients when she had time. She set the policies of the ward. She saw to it that the ward was kept clean,

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that the furniture was repaired when it needed to be. That the plumbing was repaired when it was needed. And she attended meetings in the hospital where policies were set regarding the care of her patients or his patients.

Q Would the acting head nurse do some of the same kinds of things?

A An acting head nurse would probably not be as involved in setting policy but would certainly give direct supervision and

assignments to the other staff on that ward, yes.

Q And there's certainly nothing that prevented or prohibited head nurses from getting involved in patient care; right?

A That's correct. In fact, part of their day, I'm sure, it varied with the type of patient of course, but most the head nurses spent at least part of their day giving direct care to patients, yes.

Q With respect to Building 16, when you were at the Marion VA, could you describe for us the air quality or the ventilation that you perceived or observed in that building?

A It seemed to be excellent.

Q Well, how --

A I paid particular attention to odors. In a building where most of the patients are incontinent, one of the ways that a hospital administrator, such as myself, would ensure that the staff were doing their jobs well and that the building was properly ventilated and everybody was being attentive to good ventilation, good cleaning of the patients and all was the lack of odors. And

every time I walked on that ward, I checked to make sure that I didn't smell any urine and didn't smell any feces and that was a very important standard that I set for that unit.

Q In your experience in hospitals, or other health care facilities, have you had occasion to observe rooms or buildings or facilities where the ventilation was not that good?

A Yes.

Q And what's the -- what is it -- what's the standard, what's the preferred -- what's the goal in terms of ventilation in a building like that?

A No odor at all.

Q Why is that?

A Because that tells me the staff is doing their jobs and patients are being cared for well.

Q Did you ever observe any visible clouds of smoke or any haze in Building 16 when you were in it?

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A Absolutely not.
Q Did you ever observe any stains on the wall

or on the ceiling?
A No.
Q Did you have a paint schedule at Marion?
A Normally the, every ward was painted every five or seven years.
Q And was that consistent with your experience in other VA hospitals?
A Yes.
Q Was there any kind of federal policy or procedure on that?
A No. The wards took a -- the walls, the paint got chipped as things ran into them. It was the only way to keep the ward looking nice.
Q At the time you got to Marion, were there rules and were there policies and procedures in place regarding smoking in the facilities?
A Yes.
Q And do you know, in your experience with the VA, when can you remember the first policy or procedure that related to smoking?
A In the very early 1980s, the first policies from Washington came out about curtailing smoking, yes.

Q Were there restrictions on smoking as a matter of policy sent down from Washington before that?
A I don't recall.
Q Let me ask you to refer to the exhibits we've given you. You see some of the dates on those?
A Oh, yes, I apologize. Here's one 1975. Policy on smoking in medical care facilities. 1977, smoking policy in VA health care facilities. 1978, 1981, you're right.
Q During the time you were associated with the VA, was it ever their policy to promote or encourage smoking?
A No.
Q When you were at Marion, was it ever the policy of that facility to encourage or promote smoking, by patients or staff?
A No.

MR. MOTLEY: Can I have those documents that he's looking at?
MR. OHLEMEYER: Sure.
MR. MOTLEY: You didn't give us copies.

MR. OHLEMEYER: They're in evidence.
THE COURT: Mr. Ohlemeyer, there might be some confusion as to 1283. You handed it to the doctor, but as I reviewed

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the record just a minute ago, that was not offered during Dr. Burns' testimony. You want to offer that now?

MR. OHLEMEYER: Yes, I would, Your Honor.

THE COURT: That will be admitted.

(Defendants' Exhibit(s) 1283 received in evidence.)

Q Let me hand you, Doctor, what I've marked as --

A It's not doctor.

Q I'm sorry, we've had a lot of doctors. Mr. Crisman, let me hand you what we've marked as R1738U7 and U8.

From time to time when you were at the VA in Marion, were grievances filed by the union?

A Yes.

Q And was there a specific form or procedure by which that process took place?

A Yes.

Q And how would a grievance get filed?

A The union steward or union officer who had the grievance would write the grievance on a piece of paper and send it to my office.

Q And then what would happen?

A I would send it out to the area of the hospital that, where the first line supervisor was that the grievance was about and ask them to try to settle it. And if they were unable to settle it, it would come to the department head, and if that couldn't be settled at that level, then they would come back to my office and we'd try to settle it there.

Q Did there come a point in time after Mrs. Wiley's death where you directed people with whom you worked to search the files for union grievances?

A Yes.

Q Pertaining to smoking policy?

A Yes.

Q And are these two exhibits what were provided to you at your request?

A That's correct.

Q And do you know whether any other formal complaints or grievances from the union or otherwise were found in the files of the Marion VA when this search was made at your request?

A We found nothing else.

MR. OHLEMEYER: Your Honor, I'd move R1738U7 and 8 into evidence.

MR. MOTLEY: No objection.

THE COURT: They will be admitted.

(Defendants' Exhibit(s) R1738U7 and R1738U8 received in evidence.)

Q Doctor, let me hand you a copy and give the originals to the bailiff.

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Am I correct, sir, that -- I called you doctor again, I apologize.

Am I correct that this was a grievance that was filed in 1983 regarding smoking policy in Buildings 15, 16, 17 nursing stations?

A That's correct.

Q And what was it that the union was complaining about?

A The hospital policy permitted in what they called multi, worker multi-task work areas

that if there were two groups, smokers and nonsmokers, that they would both be somehow accommodated. The employees, some of the employees on Buildings 15, 16 and/or 17 had complained that the area coordinator and the head nurses on those buildings forbid any smoking at all at the nursing stations. And the union was claiming that was in violation of the hospital policy.

Q So their complaint was that there weren't enough places for them to smoke?

A They were complaining that they were not allowed to smoke at the nursing station.

Q And that was a policy that dealt with employees, not staff; was it? I'm sorry, not patients?

A That's correct.

Q And then Exhibit U8 is the response to the grievance; right?

A Yes.

Q How is it that the response gets formed to a grievance like this?

A In this case, since the response came from the area coordinator, she typed, or had somebody type this up, and she signed it and

sent it right to the union.

Q And tell us again what you mean by area coordinator.

A That would be the next higher level of supervision over the head nurses.

Q So in this instance, Caroline Dyer is the union steward, Betty Novar is the VA employee.

A Yes. She is the area coordinator. The supervisor of the head nurses on Buildings 15, 16, and 17.

Q Am I correct in response to this grievance, the administration pointed out that there were areas for nursing personnel to smoke including break rooms in 17A, 17B, 16B, 16C, and 15B?

A That's correct.

Q And am I correct that 16B is the second floor of Building 16?

A Yes.

Q 16A was the first floor?

A That's correct.

Q Mr. Crisman, we've heard some testimony in

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this case already, I won't belabor it, but would you agree that a head nurse was a

position of leadership in your hospitals?
A Absolutely.
Q How would someone become a head nurse?
A They would be chosen from among those staff nurses who were -- who had applied whenever there was a vacancy in the head nurse group. They would invite any staff nurse who wished to be a head nurse to apply. They would evaluate the applicants and choose who they felt was best qualified.
Q And is it your understanding Mrs. Wiley became a head nurse?
A Yes.
Q And have you reviewed her personnel file, or proficiency reports?
A Yes.
Q You agree that she was well qualified to be a head nurse?
A She was well qualified.
Q And the jury's heard a little bit about her evaluations. How would you describe her proficiency reports over her employment at the VA?
A Very high.
Q How would you compare them to other

employees with whom you had experience with over the years?
A Well, other head nurses, it would be pretty typical for them to have very high proficiencies. They were a select group of nurses. Among all of the staff I worked with over the years, higher than normal.
Q Would a head nurse have duties off the floor in addition to whatever he or she was doing on the floor?
A Yes.
Q What kind of duties would that include?
A Typically memberships of committees, studying policy, studying procedures, and on some days training. Going to different places and giving training to other staff.
Q And where would those meetings and that training occur?
A In various conference rooms, training rooms all over the medical center.
Q At Marion?
A Yes.
Q We've heard some testimony about assistance that was provided to patients who smoked by staff and nurses. Are you familiar with

that practice?
A Yes.
Q Explain that to us, would you.
A If a patient was considered to be allowed to smoke, somebody who wanted to smoke and the

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physician and the nurses agreed that that patient would be allowed to smoke but the patient was either unable to smoke because they were physically unable because of a stroke or paralysis or something, or the patient was not felt to be safe, it was felt they might drop the cigarette, drop the matches or the lighter or somehow harm themselves while smoking, then to whatever extent staff were available to assist them, the staff member would sit or stand with the patient and help them smoke.

Q And was that something that, by description, could only be done by certain people, or was it something anybody would assist with?

A Well, typically the nursing assistants were the ones who assisted patients in smoking. Occasionally a registered nurse, a staff nurse would, if they were available and didn't have more important things to do,

more pressing things.

And as well volunteers on occasion will -- would help patients smoke. Family members, visitors could do that. Anybody who was capable and available.

Q There's nothing that would have prevented a head nurse from doing that; right?

A No. If she had time.

Q Would a head nurse, would that be something a head nurse typically would do?

A No. I wouldn't think so. They would be far too busy for that. But they certainly could if they had some time.

Q You're familiar with what has been described as the day room, or day rooms?

A Yes.

Q What are day rooms?

A Essentially patient lounges.

Q And what goes on in the day rooms?

A Depends on the patients, but for these patients in Building 16, for example, usually the patients -- we had a large television set attached to the wall so that they could lay in their geriatric chairs and be able to see the TV. Usually, the

patients essentially were lined up so they could see the TV.

On occasion, with some patients who were receiving physical therapy, such as stretching therapies for muscles and such, a therapist or a nursing assistant or sometimes a staff nurse would perform that therapy in the day room while the patient was watching TV.

Other times the patients were simply left there during part of the day so that they could experience something outside of their rooms. And a staff member would be with them in the day room to see to any of

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their needs.
Q For the most part, though, was the day room more of a recreation area or a treatment area?
A Well, you could hardly call it recreation for patients who can't participate in recreation. On some wards it was a recreation area. They would have volunteers come in and play bingo with them or play cards, or they would play cards themselves. But on this ward, these were not patients

who could really enjoy any recreation. They generally weren't much aware of what was going on around them.
Q Now, from time to time, I take it, you observed patients in the day room in Building 16?
A Yes.
Q Can you recall generally what percentage of them -- and I take it some of them were cigarette smokers.
A Certainly.
Q Can you recall just generally what percentage of them were cigarette smokers at any point in time that you observed?
A I'm sure I never saw more than two or three patients smoking at any one time in the day room.
Q How many patients -- do you recall how big the day room was in Building 16?
A About as large as this section of the courtroom. 30 feet by 30 feet, possibly.
Q What's the largest number of patients you can ever recall in the day room at one time in Building 16?
A Oh, it could be up to 15.

Q And those would be patients who came from that floor.
A Oh, yes.
Q Were there different day rooms on different floors for different types of patients?
A Absolutely.
Q What percentage of the day would a head nurse spend in the day room on a typical day?
MR. MOTLEY: Excuse me, Your Honor.
A I'd have to speculate.
MR. MOTLEY: Yes. I was going to say, that would be speculative.
Q Mr. Crisman, we've heard some testimony in this case about awards that Mrs. Wiley received at the VA.
A Yes.
Q Are you familiar with any of those awards?
A I think she certainly would have received and I probably would have given her longevity awards, 25-year pin, for example; 10-year pin, 20-year pin, et cetera. And I believe I noted in her records at least one

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or two special awards for achievement. These would be cash awards for her success

as a head nurse. The nursing staff wanted to give her some special recognition.

Q And would there be ceremonies where you would --

A Yes.

Q Can you ever remember Mrs. Wiley complaining to you or suggesting to you that the conditions in Building 16, as a result of cigarette smoking, were causing any problems or any concerns on her part?

A No.

Q Would a nurse, would a head nurse, have an opportunity to talk with you or members of your staff about the conditions of their employment?

A Absolutely.

Q How often would they have an opportunity to do that?

A Anytime they wanted. My door was always open, and every single employee knew it.

Q Based on your review of Mrs. Wiley's proficiency reports and your experiences with her as a head nurse, was she somebody who had the ability to persuade other people to accomplish things and to change policies

and procedures?

A She certainly was.

Q Can you think of any examples of that?

A There were noted in her proficiency ratings several times when she was successful in winning, I guess you'd call it, battles. I wouldn't want to be pejorative about it, but she was able to keep the chief of medicine, the doctor, the chief doctor in medicine, from making changes to the way patients were cared for on her ward. She was successful in talking him out of it, arguing him out of it; standing firm, and representing her patients' needs. And a couple of occasions he agreed with her and changed.

Q While you were at Marion, did employees or staff have the opportunity to bring complaints about working conditions to management's attention on a regular basis?

A Yes. That was one of the reasons I walked around the hospital.

Q And did management have the same opportunity to do so with the administration?

A I'm not sure how you distinguish management and administration.

Q Well, I guess, is there -- the administration --

A You mean with my bosses?

Q No. You being the administration, the area coordinators or people being management, and

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then the staff.
A Certainly. Absolutely.
Q So there's opportunities at every level for people to bring concerns to their supervisors?
A Absolutely.
Q If somebody wanted to make a formal complaint about working conditions, to whom could they address them?
A If they were represented by the union, if they were a non-supervisory employee, they could file a grievance with the union and the union would represent them.
Whether they were a supervisor or non-supervisor, there was also a formal non-union grievance procedure that they could use.
And frankly, they would call their Congressman, if they weren't happy. That was very effective.

Q In your experience, that was very effective?
A Extremely effective.
Q Did there come a time -- let me hand you what I've marked as Defendants' 1285. Does that appear to be a Veteran's Administration memorandum?
A A Marion VA memorandum, yes.
Q May I have it? And who is Dr. David Rosenberg?
A He was the department head in psychology.
Q And did there come a point in time where the sale of cigarettes at the Marion VA was prohibited?
A Yes. It was prohibited throughout the country in VA canteens.
Q And when was that?
A Must have been around 1987. That's when this is dated. I don't recall the details.
MR. OHLEMEYER: Your Honor, move 1285 into evidence.
MR. MOTLEY: No objection.
THE COURT: 1285 will be admitted.
(Defendants' Exhibit(s) 1285 received in evidence.)
MR. OHLEMEYER: Mr. Crisman, I

appreciate your patience. Those are all the questions I have.
THE COURT: Mr. Motley.

CROSS-EXAMINATION
BY MR. MOTLEY:
Q Good afternoon, sir. You and I have never met. My name is Ron Motley. I'm from Charleston, South Carolina. We have a VA Hospital there, too. You ever been there?
A Yes, sir, you do. No, I have not.
Q Mr. Crisman, you drove down here from Minnesota. It's a nice little hike, isn't it? 800 some odd miles?
A 870 miles.

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Q You came here voluntarily?
A Yes, sir.
Q This is not the first time you've offered testimony against Mildred Wiley's claim, is it?
MR. OHLEMEYER: Objection, Your Honor. I object to the characterization of this man's testimony.
THE COURT: Sustained.
Q You're not happy that she filed a claim, are you?

MR. OHLEMEYER: Objection, Your Honor.
THE COURT: Sustained.
Q Now, you just said that they quit selling cigarettes in the canteen in 1987?
A I don't remember the exact time, but it must have been around that time, yes.
Q Well, how do you explain the fact that RJ Reynolds shipped 86 boxes containing about 500 cartons in 1988 to the Marion canteen, 84 carton -- cases in 1989, 82 cases in 1990, and 54 cases in 1991?
A As I said, I didn't remember when they stopped.
MR. MOTLEY: Your Honor, we move Exhibit 3233 into evidence. I don't have enough copies, I'm going to show it on the screen, if I might.
THE COURT: Any objection?
MR. WAGNER: None, Your Honor.
THE COURT: All right. 3233 will be admitted. You may display on the screen, Counselor.
(Plaintiffs' Exhibit(s) 3233 received in evidence.)

Q I want you to entertain me here with some math, okay. In 1987, according to RJ Reynolds, they shipped 99 cases, okay? See that on there?
A Certainly.
Q It says -- how many cartons are in a case?
60. See it at the bottom?
A Yes, I do.
Q Okay. Now, you're going to have to help me out, because all my people know I can't add, and when I start multiplying, it gets real tricky.
So that should be 5,940 cartons. Right?
A Are you asking me? Yes, it looks as though that is right.
Q You know that a carton of cigarettes has got ten packs; right? We got one in evidence over there, I think.
MR. MOTLEY: Your Honor, may I fetch it?
Q How many you see in there?
A Ten.

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Q Ten. That's 59,400 packs of cigarettes. Can you tell the ladies and gentlemen of the

jury, I know you don't smoke, but how many cigarettes do they claim is in that pack?
A Twenty.
Q So in one year, one company, RJ Reynolds, sent 1,188,000 cigarettes to the VA canteen in Marion where you were the administrator; right?
A It would appear as though.
Q And if you accept my math, sir, from 1987 to 1991, RJ Reynolds, one company, shipped 405 cases, which is 24,300 cartons, which is 243,000 packs, which is 4,860,000 cigarettes to your VA Hospital. You accept that math?
A If you say so.
Q Well, somebody --
A I have no reason to doubt it.
Q Well, somebody was doing a powerful lot of smoking.
MR. OHLEMEYER: Objection, Your Honor, argumentative.
THE COURT: Sustained.
Q Lot of cigarettes, isn't it?
A To that one canteen, that's correct.
Q That's just one company's cigarettes. You know who the leading manufacturer, market

share-wise, in the United States is of cigarettes?
A I have no idea.
Q Well, it's not even RJ Reynolds. You didn't know it was Philip Morris?
MR. OHLEMEYER: Objection, Your Honor. Mr. Motley is testifying.
THE COURT: Sustained.
A You should understand that the VA canteen at Marion was a distribution point for the other VA canteens in Indiana, so some of those cigarettes went on to the other hospitals.
Q Well, that's still a lot of cigarettes.
Now, sir, did I hear you say you gave Mildred Wiley a 10-year pin?
A No, not a 10-year pin. I said she was -- would have been given a 10-year pin by the director at that time.
Q Did I hear you say you gave her a 25-year pin?
A I may have, yes.
Q How could you do that when she worked there in 1973 and she died in 1991?
A I don't know. I just guessed at that. I

told -- I said that I would possibly have given her pins.
Q What did Mildred Wiley look like when you got there, sir?
A I cannot remember.

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Q You don't remember what she looked like?
A No, sir.
Q Now, you told us -- by the way, did you know Rex Hughes?
A I don't recognize the name.
Q Well, do you have -- you weren't there in 1984, were you?
A No. 1987.
Q You have no way of knowing, do you, if Mr. Hughes was correct when he told the jury he painted ward 16 more often than you said you had it painted when you got there?
MR. OHLEMEYER: Objection, Your Honor. It's argumentative.
MR. MOTLEY: It's not argumentative.
A I'm sorry. I didn't understand the question.
THE COURT: Repeat it.
Q You weren't there in '84; right?

A That's correct.
Q You've got no personal basis for disputing Mr. Hughes' testimony to the jury that he painted 16 more often than you said after you got there it would have been painted?
MR. OHLEMEYER: Same objection, Your Honor.
THE COURT: Overruled. You can answer.
A No, I would have no reason to doubt what he said.
Q Now, this is a 1991 accreditation manual for hospitals. Can you confirm that?
A It appears to be, yes.
Q Did I hear you say that if you -- back in the '80s, if you would have violated the smoking thing, you would have lost your accreditation at your hospital; you would have lost your job?
A That's not what I said.
Q You didn't say that?
A I said if a surveyor walked in and seen a smoke-filled patient care environment, they would have cited the hospital for not meeting their standards of care.

Q Well, are you familiar with page 6 of that 1991 manual, sir, that said other standards, such as smoking standards, are weighed less heavily, and non-compliance with these standards alone does not affect the facility's accreditation? It will have -- non-compliance will have minimal effect on a facility's score?
A I don't see where that is.
Q Right here. Give you my copy. I've highlighted that.
A I must not have the right one.
Q Did I read that correctly?
A This was in 1993?

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Q I'm sorry, I gave you the wrong date.
A They're referring to the anticipated requirement by the JCHAO that no smoking occur in my hospital.
Q But it says that smoking is weighed less heavily, doesn't it? Doesn't it say that? Sir?
A And where would that say that?
Q Where I've got the double Xs. Right there, sir, okay?
A Okay. Non-compliance alone with those

standards would not result in non-accreditation, that is correct, that other standards would be weighed more heavily.
Q Right. Now, Mr. Crisman, you don't think the Veteran's Administration did anything wrong in this case, do you?
A I don't know what you mean.
Q Well --
MR. OHLEMEYER: Your Honor, I object.
THE COURT: He can answer that. Go ahead.
Q If the cigarette companies are saying the VA didn't do enough to protect Mildred Wiley, do you agree with that?
MR. OHLEMEYER: I'll object to that. I've not said that. That's an argument.
MR. WAGNER: Objection.
MR. MOTLEY: Your Honor, I've heard that. I stand by that statement.
MR. OHLEMEYER: I stand by the objection, Your Honor. It's argument.
MR. MOTLEY: This is

cross-examination.
THE COURT: Somewhat argumentative. You can rephrase it.
Q Let me ask you this way: Mr. Crisman, you believe, as a VA administrator from 1987, you did your level best to provide a safe workplace for Mildred Wiley, don't you?
A Yes, I do.
Q Are you aware that Brown & Williamson sold cigarettes to the Marion Veteran's Administration Hospital in 1991 and in 1992?
A If you say so. I wouldn't have any reason to know that.
Q Well, they answered -- they swore in this Court that they had. You got no reason to dispute that, do you?
A Absolutely none.
Q Have you ever been to the Davis Clinic?
A I don't know what that is. Where is it?
Q Around here.
A No.
Q Have you ever been to the Ball State Memorial Hospital?

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A Ball Memorial Hospital?
Q Ball Memorial, I'm sorry, yes.

A No.
Q So you don't know what the conditions were like there?
A At Ball Memorial?
Q With respect to where Mildred Wiley might have worked.
A At Ball Memorial, are you speaking of?
Q Yes, sir, I am.
A I do not know anything about Ball Memorial.
Q What about the hospital in Oregon where she worked?
A I have no knowledge of that.
Q And, in fact, sir, you don't have any personal knowledge of the conditions -- when did you come here, November '87?
A November of 1987.
Q Had you ever visited the Marion hospital before November 1987?
A No.
Q So from 1973 to November 1987, you have zero personal observational knowledge about what went on at that VA Hospital, don't you?
A You're absolutely right.
Q Now, sir, I heard you say there were 400 patients at the VA Hospital.

A 400 inpatients.
Q Inpatients? Well, weren't there really 580 patients?
A At various times there were more. In fact, some years before that there were 1,200 patients.
Q There were a lot of -- it reduced in size over time.
A Absolutely.
Q So there was as many as 1,000 patients there some years back.
A As many as 1,200.
Q 1,200. Now, you had a joint responsibility; you had Fort Wayne and Marion.
A In the year following -- just preceding my retirement, yes.
Q Oh, before that you were just Marion.
A That's correct.
Q Do you remember the day that Mildred Wiley fell at the VA Hospital?
A No.
Q Do you know what -- she was a head nurse in 1991; correct?
A Yes.
Q Do you know what she was doing when she

fell?
A I do not recall.
Q Well, if she was a head nurse and she was -- let me get exactly word for word what the testimony was. Can you hold on a second?

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The testimony was, Mr. Crisman, that she was in a shower washing down some equipment when she fell in the shower. Now, that indicates that, at least at that time, she was doing hands-on work; right?

A Absolutely.

Q And you're here to tell this jury that Mildred Wiley was one fine nurse, aren't you?

A Yes.

Q She was dedicated?

A Is that a question?

Q Yes.

A No question about it.

Q She was loyal?

A No question about it.

Q She cared for her patients?

A She certainly did.

Q She was a good employee?

A Very fine employee.

Q Now, sir, this day room that we're talking about was not just a day room, it didn't get shut down and locked up when the sun went down, did it?

A Oh, goodness, no. It was -- patients were in there virtually 24 hours a day.

Q Now, when you say you didn't see a blue haze of smoke, you did see smoke coming off people's cigarettes in Building 16 from time to time when you were there; correct?

A I certainly did.

Q Are you aware, sir, that veterans smoke twice as much as the general population?

A No, I'm not.

MR. OHLEMEYER: Objection, Your Honor. Argumentative.

THE COURT: Overruled. He's answered the question.

Q I'm sorry?

A I said no, I'm not aware.

MR. MOTLEY: May I ask him about this?

This is an article that talks about veterans in Veteran's hospitals, okay?

A Yes.

Q And it says, "Estimates of the prevalence of chronic cigarette smoking from 1970 to 1980 in VA hospitals shows a range of 61 to 68 percent."

Do you see that?

A Yes.

Q That's a lot -- you told us there was a lot of veterans that smoked in the Veteran's Hospital, didn't you?

A I didn't tell you that.

Q I thought you said that on direct.

A No. But I certainly agree that veterans very commonly smoke; those who can.

Q Mr. Crisman, do you know anything about

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what's in the smoke that you might have observed in Building 16?
A I don't understand your question. You mean what makes up the smoke?
Q What chemicals and things are in it.
A Absolutely nothing.
Q Do you know anything about the invisible gas phase of smoke?
A Not at all.
Q Do you know what additives are put in cigarettes?

A None.
Q You know nothing about it?
A Nothing.
Q You consider yourself a man of good education.
A I would think so, yes.
Q And you don't have a clue what's in cigarettes?
A Absolutely not.
Q And you don't have a clue what's in cigarette smoke by somebody else that smoke might get in your nose or something?
A That's correct.
Q The truth of the matter is, you really have only a vague recollection of Mrs. Wiley; correct?
A That's correct.
Q Do you know what everybody called her?
A Millie is what I was recall her being called.
Q Do you know anything about her specific background or personal history?
A Not much. Except what I read in her personnel file.
Q And you really never engaged her in casual

conversations, did you?
A Certainly, I did, when I visited her ward.
Q Well, you engaged her in conversations about what was going on at work; correct?
A Certainly.
Q Do you have any specific recollection of Mildred Wiley working with patients?
A I'm sure I saw her working with patients.
Q So even after she was head nurse, she worked with patients?
A Absolutely.
Q In fact, she liked -- she was a patient-oriented nurse, wasn't she?
A Most nurses are.
Q She was particular. You know, you've read her files, you've seen where she's gotten accommodations?
A Yes.
Q And credit for saving people's lives at that hospital.
A I agree with you totally.
Q Now, Mr. Crisman, are you aware of efforts --

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MR. MOTLEY: Your Honor, this document is in evidence, it's 33608.

THE COURT: All right.

Q Mr. Crisman, I don't have but one copy. You got a monitor right there.

A Okay.

Q And I want to ask you, if you wouldn't mind, looking at that.

MR. WAGNER: Judge, I'm going to object to this. Can we approach the bench?

THE COURT: All right.

(Bench discussion)

MR. MOTLEY: Just hold on with that for a second, okay.

Q You were asked some questions about the union. Remember that?

A Yes.

Q Do you know whether or not the Tobacco Institute was behind the screens?

MR. WAGNER: Judge --

MR. OHLEMEYER: Your Honor, now we're into an argument and we've got an exhibit, I don't think -- that's not proper.

THE COURT: Why don't you rephrase that.

Q Do you know whether or not the Tobacco Institute attempted to influence unions to

protest smoking bans, sir? Do you know anything about that?

A I would have no way of knowing anything about that.

Q Do you know whether the Tobacco Institute encouraged veteran's groups to oppose smoking bans in Veteran's Hospitals?

A I would have no way of knowing that.

Q And how many times have you met with the lawyers from the tobacco companies?

A I believe three.

Q Three times. When was the first, sir?

A They came to visit me at my home in [DELETED].

Q How many of them were there?

A Two.

Q Two? And that was -- are they in here?

A One of them is. I don't recall the other.

Q Which one?

A Mr. Tittle, I believe.

Q Okay. And when was the second time?

A When you all came up to depose me.

Q You met with them before the deposition?

A No. Just at the deposition.

Q At the deposition?

A Yes.

Q And then you met them last night?

A Yes.

Q How many were with you last night?

A Two.

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Q And who were they?
A Mr. Tittle and one other -- this gentleman here.
Q Mr. Ohlemeyer. And did either one of those lawyers tell you that the Tobacco Institute, or give you any information about what the Tobacco Institute might have been doing?
MR. OHLEMEYER: Your Honor, this is an argument.
THE COURT: Sustained.
Q Sir, you had, in the late '80s, you had somewhat of a work crisis at Marion Hospital, didn't you? You had a shortage of nurses, didn't you?
A I believe the VA has always had a shortage of nurses.
Q I'm talking specifically to Marion. You put out a memo and said, we got to work real hard because we've got a shortage of nurses here, didn't you?

A I've done that many times, you bet.
Q And Mildred Wiley answered your call, she stayed on the job, didn't she?
A She certainly stayed, yes.
Q She worked hard, didn't she?
A Absolutely.
Q And you know yourself that the head nurses, because of that shortage, they had to do a lot more patient care than in the past, didn't they?
A I don't believe they had to do more. I think they've always done a great deal.
Q So you're not here telling the jury that head nurses sit behind their desk in an office with the door closed eight hours, are you?
A Not in a VA Hospital, they don't.
Q The people that were left, when you had that budget reduction, had to do more work, you wrote, in January 1989, in a bulletin, the 6/10 edition, didn't you?
A That's correct.
Q Including more work with the patients; correct?
A Patient care staff was not the ones who were

cut.
Q Now, Mr. Crisman, let me turn to another subject matter, if I might, sir. And I want to try to do my best to get everybody out of here as soon as possible.
MR. MOTLEY: I didn't hear any objections to that, Your Honor.
Q Now, the VA smoking policies over time became more restrictive, didn't they?
A Yes.
Q And these policies that you were shown here, they really didn't do much at restricting, did they, in the '70s?
MR. OHLEMEYER: Objection, Your

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Honor. It's an argument.
A I don't know what you mean.
MR. OHLEMEYER: It's an argument.
The question was argumentative.
THE COURT: That was a question,
was it not?
MR. MOTLEY: Yes.
A I'm not sure what you mean.
Q I'm just saying it's not like they -- you've
seen these situations where people have to
go outside in the rain and smoke?

A Yes.
Q Well, that ain't what that did, is it?
A No, it is not.
Q And while you were the administrator, the
patients who were able, could smoke at
anytime in that day room or break room from
1987 up to 1991; isn't that true?
A They could smoke at any time where smoke was
permitted yes.
Q And smoke was permitted in that break room?
A No.
Q Did you meet Beth Brewer?
A Yes, I knew Beth.
Q What was her job; do you know?
A She had several jobs. She was a nursing
assistant. At some times she was in charge
of sterile supply and what we called SPD,
where equipment was cleaned and sterilized.
Q What about Mary Jane Slaughter.
A I don't remember -- I remember the name but
I don't remember the person.
Q You don't remember her. What about Marilyn
Bardsley?
A I remember Marilyn as a head nurse on one of
the units, but I don't recall which one.

Q What about Reverend Kochanek?
A Oh, yes, I remember him.
Q What did he do?
A He was a chaplain at the VA.
Q Was he a person of believability?
MR. OHLEMEYER: Objection, Your
Honor.
MR. WAGNER: Objection.
THE COURT: Sustained.
Q Well, was he a man that you had trust in?
MR. OHLEMEYER: Same objection.
THE COURT: You can answer that.
A Of course I did.
Q Do you know that he testified in this case?
A No, I do not.
Q What about Jean Lavengood?
A I've seen the name. I don't know the
person.
Q You don't remember her?
A No. There were 1100 people there.
Q I understand.
A Okay.
Q And the people who worked daily with Mildred

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Wiley from 1973 through October 1987 would have had an opportunity to observe her

working and you weren't even here; right?
A Why certainly.
Q And you've got no basis for coming in and saying what they told this jury about their remembering working with Mildred Wiley is inaccurate, do you?
MR. WAGNER: Judge, he wasn't asked those questions, so this isn't proper cross examination about a subject that wasn't going on in direct examination.
THE COURT: I don't think it was.
MR. MOTLEY: Your Honor, I think I'm entitled to demonstrate lack of ability to contradict observations of others.
MR. WAGNER: Well --
THE COURT: Objection sustained.
Q Would you agree that the Marion VA Medical Center followed the highest ideals of the nursing profession?
A Absolutely.
Q And are you familiar with the Nightingale pledge that they take?
A No.
Q Now, if the nurses are doing their jobs like they should be, then they would try to clean

up urine and feces and not leave it sitting around to create odors, wouldn't they?
A Absolutely.
Q And so you never smelled those odors in Building 16, did you?
A No, I did not.
Q Do you know whether -- are you familiar with the nurse's credo at the Marion Medical Center, qualifications of the nurse?
A A nurse's credo is not a qualification statement, is it?
Q Well, let me show it to you.
A I think you're misnaming something.
Q Well, I may well be.
A Yeah.
MR. WAGNER: Judge, none of this was gone into on direct examination, either. This is all improper cross-examination.
MR. MOTLEY: He asked questions about what was going on out there, what kind of work she did, her opportunities to complain, things like that.
THE COURT: Overruled. Go ahead.
Q Are you familiar with this?
MR. MOTLEY: Maybe I better mark

this, Mr. Cassell. This will be 49, Your Honor. I move it into evidence.
Q Are you familiar with that?
MR. WAGNER: Can we have a copy?
MR. WESTBROOK: You have the

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copies.
MR. MOTLEY: Oh, I do.
A I've never seen this exact document, but I've seen documents like it, yeah.
Q And you would agree with me that it says "Unselfishness, disregard for personal comfort and convenience --"
MR. OHLEMEYER: This isn't in evidence.
MR. MOTLEY: I moved it into evidence.
MR. OHLEMEYER: I object to it. I haven't heard any foundation.
THE COURT: I haven't heard any foundation yet.
MR. MOTLEY: Well, Your Honor, I have 104, the affidavit of authenticity.
(Bench discussion)
THE COURT: 49 will be admitted, Counselor.

(Plaintiffs' Exhibit(s) 49 received in evidence.)
Q "Unselfishness, disregard for personal comfort and convenience and untiring devotion to the interest of the patient are demanded of the nurse. Hers should be largely a labor of love in --" late in the day, excuse me, Mr. Crisman, "in conformity with which she would be willing to sacrifice herself in behalf of her patient."
Have you observed that kind of conduct and nursing attitude by Mrs. Wiley, sir?
A It sounds like every good nurse I've ever met, including Mildred.
Q "The nurse should be a careful observer, able to notice differences in the condition of the patient."
Do you agree with that?
A Certainly.
Q "The nurse should have good vision, good hearing and a good sense of smell, all of these faculties being called into frequent requisition."
Do you agree with that?
A Certainly.

Q And you have no reason to believe that the nurses at Marion didn't possess those qualities, do you?
A I certainly hope they didn't.
Q You certainly hope they did?
A I certainly hope they did, yes.
Q Mr. Crisman, let me look through my notes right here and see if I can't get you out of here.
MR. MOTLEY: Can I have two minutes, Your Honor, to go through this?
Q Are you aware, sir, of the use of a diluted floor stripper to clean the walls in Building 16 because of nicotine stains

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before you got there?
A No.
Q You don't have any documents or anything to dispute testimony if it, in fact, occurred.
A I knew nothing about it, so I wouldn't have any reason to have anything like that.
Q Now, sir --
MR. MOTLEY: I think, Your Honor, that I'm done, but if I might ask my colleagues back here for one moment?
THE COURT: Go ahead.

MR. MOTLEY: I have two questions, Judge, and I promise I won't go back and ask them again. We'll be quick.
THE COURT: Go ahead.
Q Hearing no objections, I got two questions. Would you agree that the biggest seller at the canteen was cigarettes?
A I think the cigarettes accounted for 40 percent of the sales.
Q And that was the biggest percent bought. You testified to that?
A Yes. I'm sure that's true.
Q And as far as you know, and you told us in your deposition, the whole range of products and brands were sold at that canteen.
A Certainly appeared to be.
MR. MOTLEY: Your Honor, no further questions. Mr. Crisman, I hope you have a good trip home, sir.
THE COURT: Any redirect, Mr. Ohlemeyer?
MR. OHLEMEYER: Just a little bit.

REDIRECT EXAMINATION

MR. OHLEMEYER: --
Q Mr. Crisman, tell us what a canteen is.

A It's a small shop where veterans and family and staff can buy different products. Originally started primarily to serve the veterans, selling them clothes and toothpaste, toothbrushes, any other personal items they might need, including cigarettes.
Q Who has privileges at the canteen at the Marion VA?
A Everybody that walks in the door.
Q So does everything that gets sold out of the canteen get used or consumed at the Marion VA?
A No.
Q And does everything that gets shipped to the Marion canteen get sold out of the Marion canteen?
A Not everything.
Q Why is that?
A They used it as a transition point and then goods were shipped, sent on up to Fort Wayne and even sometimes down to Indianapolis VA.
Q Would you -- you would expect a good nurse to be careful, a careful observer and a

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careful reporter, wouldn't you?
A Absolutely.

CRISMAN-REDIRECT

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Q In fact, that was a quality that was described about Mrs. Wiley in almost every one of her evaluations.
A Yes.
Q And would it be fair to describe the types of patients that were housed in Building 16 as veterans?
A Every one of them was a veteran.
Q With respect to Mr. Motley's questions, though, about the percentage of veterans that smoke, is that a narrow enough description of those patients?
A Most of those patients were unable to smoke.
Q Why was that?
A They were either physically unable because of their illness, or -- well, primarily physically unable. They were either unconscious or unable to do anything for themselves from cleaning themselves to dressing to feeding themselves and in many cases that included even the inability to actually smoke a cigarette.
Q With respect to the air quality in a ward, one aspect is the diligence of the staff.
A Absolutely.

CRISMAN-REDIRECT

5053

Q What's the other aspect that contributes to the air quality in a ward?
A Well, how effectively the engineering service maintains the fans, the exhaust fans, the air conditioners, whatever equipment is used to maintain air circulation on the ward.
Q How would you describe the air circulation on the ward in 16A?
A Adequate.
Q And from what you could observe at Marion, and from what you were required to learn about Marion, with respect to the facilities or the condition of the staff or the equipment, did you ever see any evidence that that facility was ever operated in a manner inconsistent with the Veteran's Administration policies or procedures that you were familiar with at other hospitals?
A No.
Q How would a nursing shortage affect the relationship between administration and staff?
A I don't understand what you mean.
Q Well, how responsive would an administration

CRISMAN-REDIRECT

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need to be to complaints about working conditions in a market where there was a nursing shortage?
A Very responsive.
Q Why is that?

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A Well, if we did -- didn't see to resolving any complaints that came to us, we'd lose our nurses, so we usually climbed all over ourselves trying to make them happy.
Q Am I correct that in the search of the files of the Marion VA, that that was the only complaint that was found about the smoking policy?
MR. MOTLEY: Your Honor, we went over this in direct.
THE COURT: Sounds like it's leading.
Q Mr. Crisman, did you find anything else in the file about smoking or smoking policy besides the policies and procedures of the VA, the local policies, procedures, and the union grievance we've discussed earlier?
A I don't believe so, no.
MR. OHLEMEYER: That's all I have. Thank you very much.

MR. MOTLEY: Two questions, Your Honor.
THE COURT: Go ahead.

RECROSS-EXAMINATION
BY MR. MOTLEY:
Q Mr. Crisman, if the people don't know that the smoking is going to hurt them, they may not complain; right?
A I have no way of knowing that.
Q And you had smoke eaters there, didn't you?
A Certainly.
Q Well, a smoke eater is supposed to eat what?
A Supposed to filter out particulate matter.
Q Supposed to eat what kind? Including smoke?
A I assume, yeah.
Q So a smoke eater eats smoke?
A That's why it's named that.
MR. MOTLEY: Thank you.
THE COURT: Sir, I appreciate you coming down. You are excused and free to go. Have a good trip.
We will take the break.
(Standard admonition)
THE COURT: See you back here Monday morning at 8:30. Have a good

weekend.
MR. CASSELL: All rise.
(Jury not present)
THE COURT: We're still on the record. Jury is not present.
Who will be the next witness for the plaintiff, Mr. Motley?
MR. MOTLEY: You want me to -- oh, you mean Monday?
THE COURT: I didn't mean now.
MR. MOTLEY: Because I was going to say, my audience is done gone. Your Honor, I am afraid to tell you this, but Monday is a videotape day.
THE COURT: All right, I just

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needed to know.
MR. MOTLEY: I intend to show Dr. Osdene's tape first, followed by Dr. Huber. And then in the afternoon Carol Henry and Ian Uydess. I believe we had rulings on all of those.
MR. OHLEMEYER: Correct.
MR. MOTLEY: We've had rulings on all of those.
THE COURT: I believe that's

correct.
MR. MOTLEY: All of them are videos. And in the event --
THE COURT: Will that be a full day?
MR. MOTLEY: I would think so, Your Honor. And I hate to -- you know, would you reconsider letting me bring Mr. Farone live, break up the monotony of videotapes?
THE COURT: No.
MR. MOTLEY: Somehow I didn't think I was going to win that.
MR. OHLEMEYER: Am I correct, we were looking for 1282 before?
MR. CASSELL: No.
THE COURT: No, 1283 was not admitted with the other doctor.
(Bench discussion)
MR. MOTLEY: Judge, since I took those depositions, if I don't get here till Monday afternoon, would you be upset with me?
THE COURT: No.
MR. OHLEMEYER: Stay till Tuesday.
MR. MOTLEY: He probably just wants

me to stay there.
THE COURT: Have a good weekend.
(Whereupon, the proceedings were adjourned at 4:40 p.m., to be reconvened on March 2, 1998, at 8:30 a.m.)

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INDEX OF EXAMINATION

PLAINTIFFS' WITNESSES	DX	CX	RD	RC	RDC	RCC
JEFFREY WIGAND	4726	4805	4918	4944		

INDEX OF PLAINTIFFS' EXHIBITS

EXHIBIT NOS.	RECEIVED	NOT RECEIVED
9107	4723	
140, 9108, 8935, 10322, 9855, 9852, 9851, 8919	4725	
7577, 270	4725	
21387	4760	
30941, 35974	4791	
48	4921	
8947	4927	
572	4933	
3233	5022	
49	5048	

INDEX OF DEFENDANTS' EXHIBITS

EXHIBIT NOS.	RECEIVED	NOT RECEIVED
W-19	4925	
1283	5005	
R1738U7 and R1738U8	5007	
1285	5020	

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